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DEC 06 2017

By: A. SEAMONS, Deputy

Attorneys for Petitioner/Plaintiff Darryl Cotton

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

CENTRAL DIVISION

DARRYL COTTON, an individual,

CASE NO: 37-2017-00037675-CU-WM-CTL

Petitioner/Plaintiff,

DARRYL COTTON'S EX PARTE
APPLICATION FOR AN ORDER
SHORTENING TIME TO HEAR MOTION
FOR ISSUANCE OF PEREMPTORY WRIT
IN THE FIRST INSTANCE

v.

CITY OF SAN DIEGO, a public entity; and
DOES 1 through 25,

[IMAGED FILE]

Respondents/Defendants,

Assigned to:
Hon. Joel R. Wohlfeil, Dept. C-73

Date: December 7, 2017
Time: 8:30 a.m.
Dept.: C-73

Petition Filed: October 6, 2017
Trial Date: Not Set

REBECCA BERRY, an individual;
LARRY GERACI, an individual; and
ROES 1 through 25,

Real Parties In Interest.

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BY FAX

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on December 7, 2017, at 8:30 a.m., or as soon thereafter

3 as the matter may be heard in Department C-73 of the above-entitled Court, located at 330
4 West Broadway, San Diego, California 92101, petitioner/plaintiff Darryl Cotton ("Cotton")
5 will appear ex parte to request the Court issue the following relief pursuant to Code of Civil
6 Procedure section 1085:

7 Cotton requests the Court schedule the following expedited hearing and briefing
8 schedule on Cotton's verified petition for writ of mandate:

9 <u>Event</u>	<u>Date/Deadline</u>
10 Cotton's Petition/Application	December 7, 2017
11 Oppositions of City, Berry, and Geraci	December 14, 2017
12 Cotton's Replies	December 18, 2017
13 Hearing on Cotton's Petition/Application	December 22, 2017

14 Pursuant to California Rules of Court, Rule 3.1202(a), so far as is known to Cotton, the
15 names, addresses, and telephone numbers of attorneys and parties in this case are as follows:

17 <u>Parties</u>	<u>Attorneys</u>
18 Darryl Cotton	David S. Demian Adam C. Witt Rishi S. Bhatt Finch, Thornton & Baird, LLP 4747 Executive Drive, Suite 700 San Diego, California 92121 Telephone: (858) 737-3100
22 City of San Diego c/o City Clerk - Elizabeth Maland 202 C Street, 2nd Floor San Diego California 92101 Telephone: (619) 972-5280	Jana Mickova Will, Deputy City Attorney 1200 Third Avenue Suite 1100 San Diego, California 92101 Telephone: (619) 235-5872
25 Rebecca Berry	Michael R. Weinstein Ferris & Britton 501 West Broadway, Suite 1450 San Diego, California 92101 Telephone: (619) 233-3131

28 / / / / /

1	Larry Geraci	Michael R. Weinstein
2		Ferris & Britton
3		501 West Broadway, Suite 1450
4		San Diego, California 92101
5		Telephone: (619) 233-3131

6 This application is based on upon the concurrently filed memorandum, declaration of
7 Darryl Cotton, declaration of David S. Demian, notice of lodgment, request for judicial notice,
8 proposed order, the pleadings and records on file in this action, including the verified petition
9 and its exhibits, and other oral and documentary evidence that may be presented at the time of
10 the hearing on this application.

11 Timely notice for this application was given by counsel for Cotton to all parties
12 pursuant to California Rules of Court, rule 3.1203(a). (Declaration of David S. Demian, ¶ 6.)

13 DATED: December 6, 2017

Respectfully submitted,

FINCH, THORNTON & BAIRD, LLP

14 By: 

15 DAVID S. DEMIAN

16 ADAM C. WITT

17 RISHI S. BHATT

18 Attorneys for Petitioner/Plaintiff Darryl Cotton

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Petitioner/Plaintiff,

v.

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DOES 1 through 25,

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CASE NO: 37-2017-00037675-CU-WM-CTL

REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF DARRYL COTTON'S EX
PARTE APPLICATION FOR AN ORDER
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REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DARRYL COTTON'S EX PARTE APPLICATION
FOR AN ORDER SHORTENING TIME TO HEAR MOTION FOR ISSUANCE OF PEREMPTORY WRIT IN
THE FIRST INSTANCE

BY FAX

1 A court may take judicial notice of its own records and proceedings. (Evid. Code, §
2 452.) Therefore, petitioner/plaintiff Darryl Cotton requests the Court take judicial notice of his
3 Verified Petition For Alternative Writ of Mandate [Code Civ. Proc., § 1085], along with its
4 exhibits, a copy of which is attached as Exhibit A to the concurrently filed Notice Of
5 Lodgment.

6 DATED: December 6, 2017

Respectfully submitted,

FINCH, THORNTON & BAIRD, LLP

By: 

DAVID S. DEMIAN

ADAM C. WITT

RISHI S. BHATT

Attorneys for Petitioner/Plaintiff Darryl Cotton

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Attorneys for Petitioner/Plaintiff Darryl Cotton

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

CENTRAL DIVISION

DARRYL COTTON, an individual,

CASE NO: 37-2017-00037675-CU-WM-CTL

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APPLICATION FOR AN ORDER
SHORTENING TIME TO HEAR MOTION
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MEMORANDUM IN SUPPORT OF DARRYL COTTON'S EX PARTE APPLICATION FOR AN ORDER
SHORTENING TIME TO HEAR MOTION FOR ISSUANCE OF PEREMPTORY WRIT IN THE FIRST
INSTANCE

BY FAX

INTRODUCTION

Petitioner/plaintiff Darryl Cotton brings this writ petition and ex parte application to request an accelerated hearing schedule on Cotton's motion for issuance of a peremptory writ in the first instance to protect his interest in the conditional use permit ("CUP") to operate a Medical Marijuana Consumer Cooperative or MMCC ("Cotton CUP") on Cotton's property. Cotton is the sole record owner of and interest holder in the real property at issue ("Property"). Cotton and real-party-in-interest Larry Geraci reached an agreement regarding sale of the Property and pursuit of this CUP by Geraci; however, Geraci breached the agreement and Cotton subsequently terminated the agreement with Geraci and real-party-in-interest Rebecca Berry. Ms. Berry was acting as an agent for Cotton and Geraci when she submitted the Cotton CUP. At present, only Cotton has the right to the use of the Property, and the "right to use" the Property is required to apply for, maintain an application, and obtain issuance of a CUP in San Diego. The City's refusal to accept Cotton's request to restore the Cotton CUP to his sole name deprives him of his Property in violation of his constitutional rights and in violation of California law. The City's refusal to list Cotton at all on the Cotton CUP wrongfully elevates Geraci and Berry to a position to exercise control over, and creates the opportunity for Geraci and Berry to sabotage, the use of real property they undisputedly have no right to use and which Geraci and Berry do not even allege they have a right to use. This is a significant concern here where Geraci seeks the clever application of the statute of frauds to justify his use of a five-sentence one-page document, alleged by Cotton to have been procured by fraud, to allow him to obtain a \$2,000,000 property for \$800,000.

In contrast to the continuing irreparable harm inflicted on Cotton, the unproven allegations as to breach of contract by Geraci are properly the subject of contract damages that are part of the related action before this Court, Case No. 37-2017-00010073-CU-BC-CTL. Most importantly, none of these allegations by Berry and Geraci are sufficient to create a right to use the Property - again this is a condition precedent to apply for a CUP. Consider:

1 First, the City changed its approach to processing the CUP as of September 29, 2017,
2 when it indicated that Cotton had no right to control or affect the processing of the Cotton CUP
3 affecting the Property. Previously, on May 19, 2017, the City had communicated that it would
4 suspend processing the application pending receipt of the sign-off of both the Property owner
5 and the Financially Responsible Party. The City's drastic change on September 29, 2017 was
6 to make the processing of the Cotton CUP dependent on Geraci and Berry's unilateral
7 direction- inexplicably excluding Cotton. Worse, the City has now created a "horse race"
8 between Geraci/Berry and Cotton as to who should be awarded the CUP because the City has
9 asserted that it will award the CUP to the party whose application is first approved.

10 Second, unless the Court intervenes now, Cotton will be continually harmed by being
11 forced to abdicate his right to control who may beneficially use the Property under both state
12 and federal law.

13 Third, unless the Court intervenes now, Cotton will be at risk that his adversaries will
14 derail the processing of the Cotton CUP application out of spite or for other nefarious reasons.

15 Fourth, it is undisputed that a property interest is required to maintain an application for
16 a CUP under the Municipal Code. Again, Cotton is the only person with such standing. The
17 "contract interest" alleged by Geraci is not an interest in real property sufficient to maintain
18 standing for a CUP.

19 By this ex parte application, Cotton requests the Court schedule an expedited hearing
20 and briefing schedule on Cotton's motion for issuance of a peremptory writ in the first
21 instance, which is currently set for January 26, 2018.

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II

PROCEDURAL HISTORY AND FACTUAL BACKGROUND

A. Procedural History

On October 6, 2017, Cotton filed the Verified Petition. (VP Ex. 1¹.) The VP was filed immediately in response to the City's change in position as set forth in the City's September 29, 2017 email. Cotton filed an ex parte, seeking an alternative writ at the first available hearing date on October 31, 2017. Judge Sturgeon ordered Case Number 37-2017-00037675-CU-WM-CTL to be reassigned in light of the related action Case Number 37-2017-00010073-CU-BC-CTL pending before this Court. (Declaration of David S. Demian ("Demian Decl."), ¶ 4.) Judge Sturgeon denied the ex parte request for issuance of the alternative writ. (Demian Decl., ¶ 4.) Cotton agreed to withdraw his request for a hearing on the peremptory writ before Judge Sturgeon. (*Id.*)

B. Parties, Property, and Initial Application

Cotton has at all relevant times been the sole record owner of and interest holder in the Property, which is located at 6176 Federal Boulevard, San Diego, California 92114. (Declaration of Darryl Cotton ("Cotton Decl."), ¶ 3; VP Ex. 1.) In or around August 2016, Geraci first approached Cotton and expressed interest in purchasing the Property. (Cotton Decl., ¶ 4.) Geraci represented that for the Property to run as a MMCC, a CUP must be issued by the City—a process that takes several months. (Cotton Decl., ¶¶ 5-6.)

Over the next several months, Cotton and Geraci engaged in lengthy negotiations over the terms for potential sale of the Property and ultimately reached agreement on several key terms. However, these deal points were never reduced to a single fully integrated written agreement. (Cotton Decl., ¶¶ 9-14.) On or about October 31, 2016, while negotiations were ongoing, Geraci asked Cotton to execute an Ownership Disclosure Statement, which is a required part of all CUP applications. (Cotton Decl., ¶ 9.) Geraci said that Cotton had to sign

¹ All references to "VP Ex." or "VP Exs." are to the exhibits attached to Cotton's Verified Petition for Writ of Mandate [Code Civ. Proc. § 1085] filed on October 6, 2017.

1 the form in order to provide Geraci with the ability to prepare the Cotton CUP application for
2 the Property. (Cotton Decl., ¶ 9.) The Ownership Disclosure Statement form that Geraci
3 induced Cotton to sign inaccurately stated that Cotton had leased the Property to Berry.
4 (Cotton Decl., ¶ 9; VP Ex. 1 [reflecting that Berry was listed as "Tenant/Lessee" of the subject
5 Property.]) In fact, Cotton and Berry have never entered into any agreement, written or
6 otherwise, with respect to the Property, and Cotton has never met Berry. (Cotton Decl., ¶ 9.)
7 Nonetheless, Geraci indicated that Berry was his trusted employee who was familiar with the
8 MMCC CUP process and that she was involved in Geraci's other MMCC dispensaries.
9 (Cotton Decl., ¶ 9.) In other words, Geraci represented that Berry was his agent and would act
10 on his behalf. (Cotton Decl., ¶ 9.) Based on Geraci's representations, Cotton executed the
11 Ownership Disclosure Statement that Geraci provided him. (Cotton Decl., ¶ 9.)

12 At a meeting on November 2, 2017, Geraci and Cotton reached final agreement on the
13 terms for the sale of the Property. (Cotton Decl., ¶¶ 10-11.) Geraci paid Cotton \$10,000.00,
14 non-refundable, and the parties executed a receipt for that payment. (Cotton Decl., ¶ 10-11.)
15 Over the weeks and months that followed, Cotton repeatedly reached out to Geraci for
16 information regarding the resolution of the zoning issue, the CUP application, and the status of
17 the agreement documents Geraci was supposed to have prepared to evidence the parties'
18 agreement with respect to the Property and the MMCC. (Cotton Decl., ¶¶ 13-14.) Geraci
19 continuously failed to act in good-faith in providing information to Cotton and dealing with
20 Cotton. (Cotton Decl., ¶¶ 17.) For instance, on or about March 16, 2017, Cotton first
21 discovered that Geraci had filed the Cotton CUP application back on October 31, 2016, before
22 the parties had finalized their agreement regarding the Property, and in direct contravention of
23 Geraci's express representations to Cotton that the zoning issued needed to be resolved before
24 the Cotton CUP application could be filed. (Cotton Decl., ¶ 15.)

25 Due to Geraci's bad faith actions and breaches of the parties' agreement, Cotton
26 emailed Geraci on March 21, 2017, to confirm that their agreement was terminated and that
27 Geraci had no interest in the Property. (Cotton Decl., ¶ 15.) A few days later, Geraci's
28

1 attorney emailed Cotton and indicated that Geraci intended to continue to pursue the Cotton
2 CUP application under his and Berry's name. (Cotton Decl., ¶ 18.) Cotton immediately
3 responded and reiterated that neither Geraci nor his agents have any right to the Property.
4 (Cotton Decl., ¶ 19.)

5 On May 19, 2017, the City stated by letter: "In order to continue processing of your
6 application, with your project resubmittal, please provide a new Grant Deed, updated
7 Ownership Disclosure Statement, and a Change of Financial Responsible Party Form if the
8 Financial Party has also changed." (Cotton Decl., ¶ 21.) Thereafter, on September 22, 2017,
9 Cotton, through his attorneys, demanded the City remove Berry from the Cotton CUP
10 application and to process it for Cotton, the sole record owner of the Property. (Cotton Decl., ¶
11 22; Demian Decl., ¶ 3 Ex. 1.) On September 29, 2017, the City responded by email stating its
12 refusal to remove Berry from the CUP application or process it in Cotton's sole name. (Cotton
13 Decl., ¶ 23; Demian Decl., ¶ 3 Ex. 2.) The City's response also announced that it effectively
14 changed the way it was going to process the CUP application. (Cotton Decl., ¶ 23.) The
15 City—for the very first time—directed Cotton to begin a new CUP application in his own
16 name and informed him that it would award the CUP application to the party whose
17 application was first approved. (Cotton Decl., ¶ 23.) The City's revised application procedure
18 meant that Cotton would be unlikely ever to be awarded the CUP application because the
19 Cotton CUP application, bearing Berry/Geraci name, had been pending a year or so before
20 Cotton was informed that he needed to file a CUP application in his own name to protect his
21 rights. Until this time, Cotton assumed he controlled the Cotton CUP application as owner.
22 (Cotton Decl., ¶ 23).

23 On December 4, 2017, Cotton's attorney, David S. Demian, proposed a stipulation in a
24 good faith effort to preserve Cotton's rights in the Cotton CUP and minimize the costs of this
25 litigation by sharing responsibility for the CUP. Details of this proposal are set forth in the
26 supporting papers. (See Demian Decl., ¶ 4.) Geraci and Berry, however, rejected this
27 proposed stipulation. (Demian Decl., ¶ 4.) Cotton seeks judicial relief not out of any ill will
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1 or jealousy towards Geraci or Berry, but simply to vindicate his own rights as the owner of the
2 Property. (Cotton Decl., ¶ 26.)

3 III

4 STATUTORY AUTHORITY FOR REQUESTED MANDATE RELIEF

5 Cotton seeks a writ of mandate under Code of Civil Procedure section 1085,
6 subdivision (a), which provides in part: "A writ of mandate may be issued by any court to any
7 inferior tribunal, corporation, board, or person, to compel the performance of an act which the
8 law specially enjoins, as a duty resulting from an office, trust, or station." (Code Civ. Proc. §
9 1085, subd. (a).) A petitioner is entitled to writ relief if the respondent has failed to comply
10 with a "clear, present, and ministerial duty that inures to the petitioner's benefit." (*California*
11 *High-Speed Rail Auth v. Superior Court* (2014) 228 Cal.App.4th 676, 707.) A ministerial duty
12 is one that an officer of a public agency, such as the City, is "obligated to perform in a
13 prescribed manner required by law when a given state of facts exists." (*Alliance for a Better*
14 *Downtown Millbrae v. Wade* (2003) 108 Cal.App.4th 123, 129.) Courts review a public
15 agency's action interpreting a statute under an abuse of discretion standard, meaning the
16 challenged agency action is reviewed to determine if it was "arbitrary, capricious, lacking in
17 evidentiary support, or was made without due regard for the petitioner's rights." (*American*
18 *Indian Model Schools v. Oakland Unified School District* (2014) 227 Cal.App.4th 258, 286).
19 California Rule of Court 5.94 provides that a party may seek an order shortening time
20 for good cause.

21 IV

22 COTTON IS THE ONLY PERSON LEGALLY ENTITLED TO BE THE
23 APPLICANT ON THE COTTON APPLICATION UNDER STATE LAW
24 THE CITY HAS A DUTY TO RECOGNIZE COTTON AS THE APPLICANT

25 Under both California and federal law, a property owner enjoys the right to use his
26 property as she sees fit. For instance, California Civil Code section 654 provides that
27 "ownership of a thing is the right of one or more persons to possess and use it to the exclusion
28 of others." (Underscore added.) The United States Supreme Court has also held that a

landowner's right to exclude others from the use and the possession of the property is "one of the most essential sticks in the bundle of rights that are commonly characterized as property."

(*Loretto v. Teleprompter Manhattan CATV Corp.* (1982) 458 U.S. 419, 435.)

As applied to CUPs in the City of San Diego, this rule is acted upon, in part, by the requirement that every application include an Ownership Disclosure Statement, representations as to the relationship of the applicant to the owner of the property, and a description of the real property interest of the applicant. Further, following final approval of the CUP permit, the owner of the underlying land is a required signatory of the CUP prior to recordation.

Here, Cotton is, and at all times material to this action was, the sole record owner of the real property that is the subject of this dispute. (Cotton Dec. ¶ 3.) Neither Berry nor Geraci have any interest in the Property as an owner, licensee, agent, or lessee. (Cotton Dec. ¶ 3.) Summarily, absent Cotton's approval at the outset of the application process, neither Berry nor Geraci would have been permitted to file an application for a CUP on the Property. Absent Cotton's approval at the end of the application process, neither Berry nor Geraci should be permitted to obtain a CUP on the Property.

Further, following issuance of a CUP, it runs with the land and may be controlled unilaterally by the land's owner. This rule was affirmed by the California Supreme Court in *Malibu Mountains Recreation, Inc. v. County of Los Angeles* (1998) 67 Cal.App.4th, 362, 370. As a consequence, applied here, Cotton is and always has been in control of whose name his application is processed in and in whose name the permit must be issued. The City's refusal to respect Cotton's rights to control the use of his Property is illogical. It creates the absurd result that Cotton is entitled to unilaterally control (1) the CUP application at its inception, (2) the CUP permit at issuance, and (3) the CUP permit following its issuance, but has no say on the CUP at any time in between. The plain language of the Municipal Code provides at section 113.0103:

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Applicant means any person who has filed an application for a permit, map or other matter and that is the record owner of the real property that is the subject of the permit, map, or other matter; the record owner's authorized agent; or any other person who can demonstrate a legal right, interest, or entitlement to the use of the real property subject to the application.

(Underscore added.) Cotton, the sole record owner of the Property, is the only person who qualifies as the applicant on the Cotton CUP application under this standard. Even assuming the contract interest alleged by Geraci in his related action is valid, this contract interest does not contain or create a “right to use” the Property. The simple truth is that either ownership, a leasehold interest, or a license is necessary to obtain the Cotton CUP. Berry and Geraci have none of these. The City has a ministerial duty to recognize Cotton as the sole applicant on the Cotton CUP application.

V

AN EXPEDITED HEARING AND BRIEFING SCHEDULE SHOULD BE ORDERED

First, Cotton will continue to suffer from the City's arbitrary and capricious decision to process the Cotton CUP application without his input. Back in May 2017, the City informed Cotton that it would not process the Cotton CUP application absent additional information clarifying property ownership. Thus, Cotton was assured involvement in the processing of the CUP by the City, which is consistent with logic and standard practice as he is the owner. Yet, on September 29, 2017, the City suddenly informed Cotton that it would process the CUP application without his input. The City's email instructs that Cotton must submit a new and separate CUP application, bearing his name alone, in order to protect his rights. The email further informed Cotton that he must have this new application processed and approved before the City renders a decision on the already pending Cotton CUP application. The City's switch creates an untenable situation because it virtually assures that Cotton's "new" CUP application (which bears his name alone) would not be approved before the City approves Cotton's "original" CUP application. The already-pending Cotton CUP application was filed 12 months before Cotton could file his new CUP application. If Cotton fails to file a new application

1 and win the "horse race" to the finish line of the already pending Cotton CUP application that
2 is unjustly under the sole control of Geraci and the City, he will be irreparably harmed.

3 Second, the City's approach to this CUP improperly endows Berry and Geraci with
4 power to sabotage the application efforts of Cotton as to his Property. The City should not
5 accept information from Berry and Geraci as to a Property in which they have no right to use.
6 Berry and Geraci, at any time, could provide misinformation as to the Property and or mislead
7 the City in order to sabotage the Cotton CUP. Cotton should not be subjected to this risk for a
8 day let alone for the many months it will take to resolve the contract and fraud lawsuit pending
9 in the related action.

10 Third, the City is pursuing a dedication of a portion of the Property and that this
11 dedication is supposed to occur any day now. (Cotton Decl., ¶ 27, see Schweitzer Decl., ¶ 15,
12 attached as Ex. 11 to Cotton Decl.) Geraci has not paid a \$6,000.00 invoice necessary to the
13 CUP processing. (Cotton Decl., ¶ 27, Ex. 12.). In fact, the CUP issuance is to occur "no later
14 than March 2018. (Schweitzer Decl. ¶¶ 12-13, attached as Ex. 11 to Cotton Decl.) The
15 exclusion of Cotton, the only person with an interest in the property, from these events—
16 learned only as part of this lawsuit—is unreasonable and unacceptable.

17 Fourth, Cotton is daily being denied the right to exercise his authority to decide who
18 may or may not beneficially use his Property. Courts have recognized that such harm is
19 irreparable. Such a denial constitutes irreparable harm. (*Fretz v. Burke* (1967) 247 Cal.App.2d
20 741, 746 [holding that an irreparable harm occurs where one's behavior "constitutes an
21 overbearing assumption by one person of superiority and domination over the rights and
22 property of others"; accord *Loretto v. Teleprompter Manhattan* (1982) 458 U.S. 419, 435].
23 Simply put, the City's refusal to acknowledge Cotton as essential to the Cotton CUP
24 application is an abuse of discretion and must be immediately remedied.

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CONCLUSION

The relief Cotton seeks in his writ petition and in this ex parte application is proper because he has no other plain, speedy, or adequate legal remedy. Cotton provided timely notice of this application to all parties per California Rules of Court 3.1203 and 3.1204. (Demian Decl., ¶ 5.) As of this drafting, it is unknown if City, Geraci, and Berry will be opposing. (Demian Decl., ¶ 6.) There are no other administrative processes or legal channels by which Cotton can compel the City to recognize his beneficial right to be recognized as the sole applicant on the Cotton CUP application. For the reasons stated above, the Court should grant Cotton's request for an order shortening time to hear Cotton's motion for issuance of peremptory writ in the first instance.

DATED: December 6, 2017

Respectfully submitted,

FINCH, THORNTON & BAIRD, LLP

By: 

DAVID S. DEMIAN

ADAM C. WITT

RISHI S. BHATT

Attorneys for Petitioner/Plaintiff Darryl Cotton

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FOR THE COUNTY OF SAN DIEGO

CENTRAL DIVISION

DARRYL COTTON, an individual,

CASE NO: 37-2017-00037675-CU-WM-CTL

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DECLARATION OF DAVID S. DEMIAN IN
SUPPORT OF DARRYL COTTON'S EX
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Hon. Joel R. Wohlfeil, Dept. C-73

Date: December 7, 2017
Time: 8:30 a.m.
Dept.: C-73

Petition Filed: October 6, 2017
Trial Date: Not Set

REBECCA BERRY, an individual;
LARRY GERACI, an individual; and
ROES 1 through 25,

Real Parties In Interest.

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/////

/////

DECLARATION OF DAVID S. DEMIAN IN SUPPORT OF DARRYL COTTON'S EX PARTE
APPLICATION FOR AN ORDER SHORTENING TIME TO HEAR MOTION FOR ISSUANCE OF
PEREMPTORY WRIT IN THE FIRST INSTANCE

BY FAX

1 I, David S. Demian, declare as follows:

2 1. I am an attorney admitted to practice before this Court and all courts in the State
3 of California and a partner in the law firm of Finch, Thornton & Baird, LLP, counsel of record
4 for petitioner/plaintiff Darry Cotton ("Cotton"). I make this declaration in support of Cotton's
5 ex parte application for an order shortening time to hear motion for issuance of peremptory
6 writ in the first instance.

7 2. I have personal knowledge of the facts stated herein and, if called as a witness, I
8 could and would competently testify to them.

9 3. On September 22, 2017, I wrote to Firouzeh Tirandazi, Development Project
10 Manager, for the City of San Diego, and informed her that the CUP application at issue in this
11 action should be processed solely in Cotton's name. A true and correct copy of this letter is
12 attached as Exhibit 1. Ms. Tirandazi replied, however, by saying that Cotton should file a new
13 CUP application in his name alone but that the City would award the application to the party
14 whose application the City processes first. A true and correct copy of this email is attached as
15 Exhibit 2 to this declaration.

16 4. On October 31, 2017, I appeared before Judge Sturgeon and represented Cotton
17 on an ex parte application for alternative writ, Case No. 37-2017-00037675-CU-WM-CTL.
18 Judge Sturgeon ordered the matter to be reassigned with the related action Case Number 37-
19 2017-00010073-CU-BC-CTL pending before this Court. Judge Sturgeon denied the request
20 for issuance of the alternative writ. Cotton agreed to withdraw his request for a hearing on the
21 peremptory writ before Judge Sturgeon in light of the reassignment of the case with the related
22 civil action.

23 5. On December 4, 2017, I proposed a stipulation whereby (1) parties agree to
24 work together in good faith to pursue the prompt issuance of the CUP; (2) parties agree to
25 instruct City to communicate with both parties as applicants; (3) the parties to agree that
26 neither will take any action to withdraw or terminate the application without the other party's
27 prior written consent; (4) parties agree the parties will share all communications relating to the

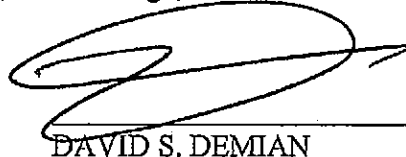
1 CUP process made with the City or any third-party consultant of a party, whether oral or
2 written; (5) parties agree to split 50/50 the costs incurred to the City for pursuing the CUP from
3 the date of this order, provided the costs are reasonably incurred and approved in advance in
4 writing by Geraci and Cotton; (6) the parties reserve the right to recover all such costs in
5 connection with the Geraci v. Cotton Action; (7) Geraci and Berry to deliver to Cotton copies
6 of all documents relating to the CUP application process from the date of CUP submission
7 through today's date, including communications, reports and analyses prepared by consultants
8 retained by Geraci in connection with the CUP (such as Abby Schweitzer); and (8) the Court
9 appoints a referee to resolve disputes as to the enforcement of the stipulated order. Geraci and
10 Berry, however, rejected this proposed stipulation.

11 6. Pursuant to California Rules of Court, rules 3.1203 and 3.1204, I provided
12 timely ex parte notice of this application to all parties, including the date, time, and relief
13 sought. On December 5, 2017, I sent written notice of this ex parte application to Jana
14 Mickova Will, Deputy City Attorney for respondent/defendant City of San Diego, and Michael
15 R. Weinstein, counsel for real parties in interest Rebecca Berry and Larry Geraci. A true and
16 correct copy of this written notice is attached as Exhibit 3 to this declaration.

17 7. The notice provided stated that Cotton's application would be filed in
18 Department C-73 of the captioned court and would proceed at 8:30 a.m. or as soon thereafter
19 as the Court would hear it. As of this drafting, I have not received response stating whether the
20 City, Berry, or Geraci will oppose.

21 I declare under penalty of perjury under the laws of the State of California that the
22 foregoing is true and correct.

23 Executed this 6th day of December 2017, in San Diego, California.

24 
25
26 DAVID S. DEMIAN

27 2403.002/3C47897.amq
28

Exhibit 1

FINCH • THORNTON • BAIRD^{LLP}

ATTORNEYS AT LAW

David S. Demian
ddemian@ftblaw.com

File 2403.002

September 22, 2017

VIA U.S. AND ELECTRONIC MAIL

Ms. Firouzeh Tirandazi
Development Project Manager II
Development Services Department
1222 First Avenue, MS 301
San Diego, California 92101-4101
ftirandazi@sandiego.gov

Re: 6176 Federal Boulevard - Project 520606 Conditional Use Permit

Dear Ms. Tirandazi:

We represent Darryl Cotton, the record owner of 6176 Federal Boulevard ("Property") that is the subject of the application ("Project 520606") to obtain a Conditional Use Permit ("CUP") to operate a Medical Marijuana Consumer Cooperative ("MMCC").

As set forth below, Rebecca Berry has no legal basis to be listed in any capacity on Project 520606. Therefore, we demand the City either: (1) remove Ms. Berry from Project 520606 and process the application for Mr. Cotton; or (2) commit to accepting Mr. Cotton's separate, parallel application for a CUP on the Property in his capacity as record owner.

1. Remove Ms. Berry From Project 520606

- a. Mr. Cotton is the record owner of the Property.¹
- b. Ms. Berry submitted the General Application (Form DS-3032) for Project 520606 as "an other person having a legal right, interest, or entitlement to the use of the property" pursuant to Municipal Code section 112.0102. She further submitted the Ownership Disclosure Statement (DS-318) as "Tenant/Lessee."
- c. Ms. Berry is not currently, and never has been, a Tenant/Lessee of the Property nor does she have any other legal right, interest, or entitlement to the use of the Property.
- d. Until reviewing a recently obtained copy of the application via a Public Records Act Request, Mr. Cotton had no knowledge that the Ownership Disclosure Statement (DS-318) contained a statement that Ms. Berry claimed an interest in the Property as a Tenant/Lessee.
- e. Municipal Code section 126.0302 provides that the privileges and conditions of a CUP are a covenant that runs with the land and, in addition to binding the permittee, bind each successor in interest. Further, a variance for the use of property in a particular manner is not personal to the owner at the time of the grant, but is available to any subsequent owner, until it expires according to its terms or is effectively revoked, and this is true, even though the original owner did not act on it. (See *Cohn v. County Bd. of Sup'rs of Los Angeles County* (1955) 135 Cal.App.2d 180, 184.)

¹ Record owner means the owner of real property as shown on the latest equalized property tax assessment rolls of the San Diego County Assessor (SDMC § 113.0103).

In sum, Ms. Berry cannot produce any evidence of a legal right, interest, or entitlement to the use of the Property confirming her interest in the Property. Therefore, she must be removed from Project 520606 and replaced by Mr. Cotton as record owner.

2. Accept Second Application

If the City nevertheless continues to recognize Ms. Berry as the Applicant for Project 520606 in her capacity as Tenant/Lessee, then we demand the City commit to accepting Mr. Cotton's separate, parallel application for a CUP on the Property in his capacity as record owner. We understand the City recently refused Mr. Cotton's request to process a separate, parallel CUP application on the Property. This refusal is not supported by any provision of the Municipal Code.

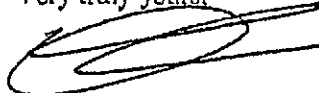
An application may be filed by any person that can demonstrate a legal right, interest, or entitlement to the use of the real property subject to the application. (SDMC § 112.0102.) Where there is a dispute over who has a right to the use of the property, the City must necessarily allow for multiple, separate applications from those parties to the dispute until the dispute has been resolved.

Indeed, the City's refusal to accept a separate, parallel CUP application directly conflicts with our own experience with Project 370687 and Project 421373, the second of which was submitted upon the City's advice and accepted for review while the first had already been approved by the Hearing Officer. In Project 370687, the property owner's authorized agent submitted a CUP application on behalf of the property owner. A dispute arose between the property owner and the authorized agent over who had the right to the CUP application. The property owner was forced to file a petition for writ of mandate against the City to replace the authorized agent with the property owner, and the property owner prevailed. (See *Engelbrechtsen v. City of San Diego* (2015) 37-2015-00017734-CU-WM-CTL.) While the lawsuit to determine who had the right over the CUP application was pending, the City allowed the property owner to submit his own CUP application for the same property in his capacity as property owner.

3. Conclusion

We demand the City either: (1) remove Ms. Berry from Project 520606 and process the application for Mr. Cotton; or (2) commit to accepting Mr. Cotton's separate, parallel application for a CUP on the Property in his capacity as record owner. We demand a response in writing by September 28, 2017. If we do not hear from you we will deem both of these requests to have been denied and will file a petition for writ of mandate with the Superior Court.

Very truly yours,



David S. Demian,
Partner

DSD:dsd/3BU080502

Exhibit 2

David S. Demian

From: Tirandazi, Firouzeh <FTirandazi@san-diego.gov>
Sent: Friday, September 29, 2017 4:23 PM
To: Holly J. Glavinic
Cc: David S. Demian; Abhay Schweitzer; becky@tfc-sd.net; FitzGerald, PJ
Subject: RE: 6176 Federal Boulevard - Project 620606 Conditional Use Permit

Good Afternoon Mr. Demian,

Development Services Department (DSD) is in receipt of your correspondence dated September 22, 2017. You may submit an application for a CUP for a Marijuana Outlet.

As you've acknowledged in your letter, DSD is currently processing an application, submitted by Ms. Rebecca Berry on March 13, 2017, for a Conditional Use Permit for a proposed Medical Marijuana Consumer Cooperative at 6176 Federal Boulevard. Ms. Berry and her consultant processing the application on her behalf, Mr. Abhay Schweitzer, are also copied on this email.

Please be advised that the City is only able to make a decision on one of these applications; the first project deemed ready for a decision by the Hearing Officer will be scheduled for a public hearing. Following any final decision on one of the CUP applications submitted for the above referenced address, the CUP application still in process would be obsolete and would need to be withdrawn.

Regards,

Firouzeh Tirandazi
Development Project Manager
City of San Diego
Development Services Department

(619)446-5325
san-diego.gov

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From: Holly J. Glavinic [mailto:hglavinic@ftblaw.com]
Sent: Friday, September 22, 2017 11:27 AM
To: Tirandazi, Firouzeh <FTirandazi@san-diego.gov>
Cc: David S. Demian <ddemian@ftblaw.com>
Subject: 6176 Federal Boulevard - Project 620606 Conditional Use Permit

Ms. Tirandazi,

Please see the attached letter of today's date sent on behalf of David Demian regarding the above-referenced Conditional Use Permit.

Holly J. Glavinic *Legal Secretary*

Finch, Thornton & Baird, LLP Attorneys At Law
4747 Executive Drive, Suite 700 San Diego, CA 92121
T 858.737.3100 F 858.737.3101 ftblaw.com

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Exhibit 3

David S. Demian

From: David S. Demian
Sent: Tuesday, December 05, 2017 6:01 PM
To: Michael Weinstein; "Will, Jana"
Subject: Ex Parte Notice Cotton v. City of San Diego, Real Parties In Interest Geraci and Berry, Case No. (Case No. 37-2017-00037675-CU-WM-CTL)

Dear Counsels:

This is to provide notice we have set an ex parte hearing in the referenced action before Judge Wohlfell in Department C-73 on Thursday, December 7, 2017, at 8:30 a.m., at which we will seek an order shortening time to hear our motion for issuance of peremptory writ in the first instance. We are preparing moving papers and will serve them on you as soon as they are available.

Regards,

David

David S. Demian *Partner*

Finch, Thornton & Baird, LLP Attorneys At Law
4747 Executive Drive, Suite 700 San Diego, CA 92121
T 858.737.3100 D 858.737.3118 M 858.245.2451 F 858.737.3101

fblaw.com [Bio](#) [LinkedIn](#)

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DAVID S. DEMIAN, SBN 220626
E-MAIL: ddemian@ftblaw.com
ADAM C. WITT, SBN 271502
E-MAIL: awitt@ftblaw.com
RISHI S. BHATT, SBN 312407
E-MAIL: rbhatt@ftblaw.com

F I L E D
Clerk of the Superior Court
17 DEC 6 AM 10:44
DEC 06 2017

FINCH, THORNTON & BAIRD, LLP

ATTORNEYS AT LAW
4747 EXECUTIVE DRIVE - SUITE 700
SAN DIEGO, CALIFORNIA 92121-3107
TELEPHONE: (858) 737-3100
FACSIMILE: (858) 737-3101

By: A. SEAMONS, Deputy

Attorneys for Petitioner/Plaintiff Darryl Cotton

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO
CENTRAL DIVISION

DARRYL COTTON, an individual,
Petitioner/Plaintiff,

v.

CITY OF SAN DIEGO, a public entity; and
DOES 1 through 25,
Respondents/Defendants,

CASE NO: 37-2017-00037675-CU-WM-CTL

DECLARATION OF DARRYL COTTON IN
SUPPORT OF DARRYL COTTON'S EX
PARTE APPLICATION FOR AN ORDER
SHORTENING TIME TO HEAR MOTION
FOR ISSUANCE OF PEREMPTORY WRIT
IN THE FIRST INSTANCE

[IMAGED FILE]

Assigned to:
Hon. Joel R. Wohlfeil, Dept. C-73

Date: December 7, 2017
Time: 8:30 a.m.
Dept.: C-73

Petition Filed: October 6, 2017
Trial Date: Not Set

REBECCA BERRY, an individual;
LARRY GERACI, an individual; and
ROES 1 through 25,

Real Parties In Interest.

I, Darryl Cotton, declare as follows:

1. I make this declaration in support of my application for an order shortening time to hear my motion for issuance of peremptory writ in the first instance.

DECLARATION OF DARRYL COTTON IN SUPPORT OF DARRYL COTTON'S EX PARTE
APPLICATION FOR AN ORDER SHORTENING TIME TO HEAR MOTION FOR ISSUANCE OF
PEREMPTORY WRIT IN THE FIRST INSTANCE

BY FAX

2. All facts stated in this declaration are made on the basis of personal knowledge, and if called as a witness, I could and would competently testify to them.

3. I am, and have been at all relevant times, the sole record owner of the real property located at 6176 Federal Boulevard, San Diego, California 92114 ("Property"). Neither Rebecca Berry ("Berry") nor Larry Geraci ("Geraci") have any interest in Property, whether as agent, licensee, owner, lessee, or any other type of interest.

4. In or about August 2016, Geraci approached me and expressed interest in purchasing the Property.

5. Geraci said he was interested in the Property because it was potentially eligible to be awarded a conditional use permit ("CUP") by the City of San Diego for the operation of a Medical Marijuana Consumer Cooperative ("MMCC").

6. Geraci indicated that the permitting process would take several months but that he had special skills in obtaining the CUP that would benefit our application. Specifically, he represented there was a zoning issue that needed to be resolved before the CUP application could be filed and that he was uniquely qualified to resolve it. I believed him because Geraci told me he has successfully run other marijuana dispensaries in San Diego County.

7. Over the course of the following weeks and months, Geraci and I continued to discuss the CUP application process and negotiated the terms of the possible sale of the Property.

8. On September 24, 2016, for instance, I sent Geraci a proposed agreement. This proposal provides, in part, that Geraci would pay me a total of \$800,000.00 in consideration for the sale of my Property. This proposal was not executed. A true and correct copy of the proposed agreement is attached as Exhibit 1 to this declaration.

9. On or around October 31, 2016, Geraci told me that that I had to sign a "Ownership Disclosure Statement" in order to allow Geraci to prepare the CUP application.

The form had Rebecca Berry ("Berry") listed as a tenant, even though I have never met her and have never rented my Property to her. Geraci explained that Berry was his trusted employee

1 who was knowledgeable and involved in the MMCC CUP process and procedure. I believed
2 Geraci and executed the application based on Geraci's representations.

3 10. On or around November 2, 2016, Geraci and I spoke at his office about our
4 CUP arrangement and the sale of the Property. We reached final agreement on the terms for
5 the sale of the Property which included, but without limitation, the following key deal points:

6 (a) Geraci agreed to pay \$800,000.00 in cash consideration for the purchase of the
7 Property, with a \$50,000.00 non-refundable deposit payable to me immediately and the
8 remaining \$750,000.00 payable to me upon the City's approval of the CUP application for the
9 Property;

10 (b) The parties agreed that the City's approval of a CUP application to operate a
11 MMCC at the Property would be a condition precedent to closing the sale of the (i.e.: the sale
12 of the Property would be completed and title transferred to Geraci only upon the City's
13 approval of the CUP application and Geraci's payment of the \$750,000.00 balance of the
14 purchase price to Cotton. If the City denied the CUP application, the parties agreed the sale of
15 the Property would be automatically terminated and Cotton would be entitled to retain the
16 entire \$50,000.00 deposit.)

17 (c) Geraci promised to give me a 10% equity stake in the MMCC that would
18 operate at the Property following the City's approval of the CUP application;

19 (d) Geraci agreed that, after the MMCC started operations at the Property, Geraci
20 would pay me 10% profits of the MMCC's monthly profits and that Geraci would guarantee
21 that such payments would be at least \$10,000.00 per month; and

22 (e) The parties agreed to negotiate in good faith for execution of an agreement
23 comprising all the foregoing binding provisions as well as provisions reasonable and
24 customary for such an agreement.

25 11. Although Geraci and I came to a final agreement on the purchase price and
26 deposit, Geraci asked me if he could pay me a partial deposit of \$10,000.00 towards the total,
27 \$50,000.00 amount, as he needed some extra time to pay me the full \$50,000.00 deposit.

1 Geraci paid me the \$10,000.00, and we executed a receipt for that payment that very day,
2 November 2, 2016 ("November Writing"). Attached at Exhibit 2 is a true and correct copy of
3 the November Writing.

4 12. Later the same day that we executed the November Writing, I emailed Geraci
5 and told him that, after further review, our November Writing failed to reflect a key term
6 regarding my equity stake in the MMCC to be operated at the Property. In my email, I
7 reminded Geraci that my ten percent equity in the MMCC was vitally important to me. I also
8 told Geraci to confirm that my equity stake was a term of our agreement. He replied by saying
9 "no problem." A true and correct copy of this email is attached as Exhibit 3 to this declaration.

10 13. In the weeks and months after our November meeting, Geraci provided me
11 writings that materially differed the terms of our agreement. On February 27, 2017, Geraci
12 sent me a draft Purchase Agreement. A true and correct copy of this Purchase Agreement is
13 attached as Exhibit 4. On March 3, 2017, Geraci mailed me a draft "side agreement" that was
14 supposed to reflect my 10 percent equity interest in the MMCC. A true and correct copy of
15 this agreement is attached as Exhibit 5 to this declaration. I expressed my displeasure at this
16 non-conformity and brought this fact to Geraci's attention. A true and correct copy of this
17 statement is attached as Exhibit 6 to this declaration.

18 14. Nonetheless, over the months, I continually reiterated the terms of our contract
19 by emailing Geraci a summary of the key terms of our agreement. In the numerous emails that I
20 sent Geraci, I reaffirmed the fact that he promised to pay me a \$50,000.00 non-refundable
21 deposit; that he promised to pay me a 10 percent profit in the MMCC and a minimum of
22 \$10,000.00 per month; and that he promised to negotiate with me to execute an agreement to
23 contain all the foregoing bid's terms. Never once did Geraci deny the terms of our agreement
24 or aver that I misunderstood him. A true and correct copy of this email exchange is attached as
25 Exhibit 7 to this declaration. Geraci also texted with me as to his progress on the project and
26 the final deal documents and never disavowed the agreed terms. A true and correct copy of
27 text exchanges is attached as Exhibit 9 to this declaration.

1 15. On or about March 16, 2017, I first discovered that Geraci had filed the CUP
2 application for the Property back on October 31, 2016—even though he had previously
3 promised he would not do so until after we finalized our purchase agreement (as we had agreed
4 that the remaining \$40,000.00 of his deposit would be payable upon filing the CUP
5 application).

6 16. On March 21, 2017, I sent him notice via email that our agreement with respect
7 to the Property was terminated.

8 17. Because of Geraci's bad faith actions and breaches of the November Writing, I
9 entered into a real-estate purchase-agreement with another buyer, RJ, for the subject property.
10 This purchase-agreement originally provided that I would hold a 20% interest in any MMCC
11 operated on the Property. In an effort to stymie this transaction, Geraci filed a lawsuit (Case
12 No. 37-2017-00010073-CU-BC-CTL) against me.

13 18. On March 22, 2017, Geraci's attorney, Michael R. Weinstein ("Weinstein"),
14 emailed me a copy of a lawsuit Geraci intended to file against me. On March 28, 2017,
15 Weinstein emailed me and told me that Geraci was moving forward with the CUP process and
16 that Geraci intended to post notices on the Property.

17 19. I responded to Weinstein's email and stated that Geraci is not allowed on the
18 Property and that Geraci has no rights to the Property because our agreement had been
19 terminated.

20 20. I desire to have Geraci's associate, Berry, immediately removed from my CUP
21 application on my Property because she was never a tenant of the Property and never had any
22 rights to the Property whatsoever and her refusal to cede control of the CUP application is
23 impairing my property rights with respect to my Property.

24 21. On May 19, 2017, the City sent a letter that stated, among other things: "In
25 order to continue processing of your application, with your project resubmittal, please provide
26 a new Grant Deed, updated Ownership Disclosure Statement, and a Change of Financial
27 Responsible Party Form if the Financial Party has also changed." Based on the City's email, I

1 assumed that I need not take any affirmative steps to protect my rights. A true and correct
2 copy of this letter is attached at Exhibit 8 to this declaration.

3 22. On September 22, 2017, my attorney, David S. Demian, sent a letter to the City
4 of San Diego demanding that the City remove Berry from the CUP application and process the
5 CUP in my name alone.

6 23. On September 29, 2017, the City of San Diego responded to my attorney and
7 indicated they would not remove Berry from the CUP. The City continues to refuse my
8 request to remove Berry from my CUP on my Property even though I have provided evidence
9 that I am the sole record owner of the Property and confirmed that Berry has no rights to the
10 Property. Actually, the City did more than just refuse my request: It told me that it changed the
11 way it was going to process the CUP application. For the very first time, the City told me to
12 begin a new CUP application in my name alone and informed me that it would award the CUP
13 application to the party whose application was first approved. This revision means that I
14 would be unlikely ever to be awarded the CUP application because my original application,
15 bearing Berry/Geraci name, had been pending a year or so before I ever was informed that I
16 needed to file a CUP application in my own name. Until this time, I assumed I could CUP
17 application by refusing to furnish documents required to finalize the CUP application.

18 24. To date, Geraci has never paid me the balance of the \$40,000.00 deposit that I
19 am due. I am also concerned that the City's failure to honor my request will cause me to lose
20 the competitive advantage that I will otherwise have in the marketplace because I will be
21 forced to abandon my year-old application and resubmit under a new, entirely different, and
22 potentially longer regulatory scheme beginning January 1, 2018. Per the November
23 Agreement Geraci was to pay me \$800,000.00 and ensure I received at least \$10,000.00 a
24 month from operations of the MMCC which would last for an estimated 10-year period at
25 minimum. This is an obligation of approximately \$2,000,000. Were Geraci to acquire the
26 Property for \$800,000 he would receive a windfall of at least \$1,200,000.00.

27 / / / /

1 25. I seek the Court's intervention now to help me protect my property rights and
2 prevent the waste of my Property's business potential.

3 26. I seek the Court's intervention not out of animus, jealousy, or ill-will towards
4 Geraci or Berry. I simply want to vindicate my rights as the owner of my property.

5 27. It is my understanding that Geraci is pursuing a dedication to the City of a
6 portion of the Property and that this dedication is supposed to occur any day now, per Geraci's
7 CUP consultant Abby Schweitzer. Attached at Exhibit 11 is a true and correct copy of the
8 declaration of Mr. Schweitzer. Additionally, it is my understanding that Geraci has not paid a
9 \$6,000 invoice necessary to the dedication. Attached at Exhibit 12 is a true and correct copy of
10 the most recent invoice of the City in connection to the dedication. Although these matters
11 affect the Property, I am not notified by the City of any of these matters.

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1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct.

3 Executed this 3rd day of December 2017 in San Diego, California.

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5 
6 DARRYL COTTON

7 2403.002/3C48047.amq
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Exhibit 1



SERVICES AGREEMENT CONTRACT

Date: 09/24/16

Customer: GERL Investments
5402 Ruffin Road, Ste. 200
San Diego, CA 92103

Attn: Mr. Larry Geraci
Ph: 858.956.4040
E-mail: Larry@TFCSD.net

Mr. Geraci;

Pursuant to our conversations I have developed this document to act as the Contract between us that will serve to define our relationship, services, and fee's for the development of 6176 Federal Boulevard San Diego, CA. 92114 (hereinafter referred to as the property) as a new dispensary to be owned and managed by your company, GERL Investments.

- 1) The property is currently owned by me, Darryl Cotton (Cotton-Seller) and occupied by my company, Inda-Gro Induction Lighting Company (Inda-Gro-Tenant). Under separate Contract Cotton has agreed to sell the property to GERL Investments (GERL-Buyer) for \$400,000.00 and a 10% equity position in the new licensed cannabis dispensary business being developed at the property by GERL.
- 2) Upon completion and transfer of property ownership Cotton will immediately cease being the landlord to Inda-Gro and Inda-Gro will become the tenant of GERL.
- 3) GERL plans to tear down the existing structure(s) and build a new structure for a commercial dispensary. Under this Agreement GERL will allow Inda-Gro to remain in the property at no charge until such time that the plan check with the City of San Diego has been approved and permits have been issued. This process is expected to take 6-9 months. At the time GERL notices Inda-Gro that the permits have been issued Inda-Gro will have 30 days to vacate the property. Inda-Gro agrees to cooperate with GERL architects to access the property during the design phase of this work.
- 4) Inda-Gro is agreeing to vacate the property in consideration for a relocation fee of \$400,000.00 of which payment would be made in two parts. Upon execution of this Contract GERL agrees to pay Inda-Gro \$200,000. Upon issuance of the permits and the 30 day notice to vacate the balance, \$200,000.00 would become payable and due.
- 5) Inda-Gro currently operates what we refer to as a 151 Farm. This is a teaching and touring farm that demonstrates urban farming technologies which utilize our lighting systems, controls and water savings strategies utilizing Aquaponics systems. Since it is in the interest of all parties; Inda-Gro, Cotton and

Inda-Gro
6176 Federal Blvd., San Diego, CA 92114-1401
Toll Free: 877.452.2244 Local: 619.266.4004
www.inda-gro.com

GER0362



GERL to identify ongoing investment opportunities with both cannabis and non-cannabis related ventures Inda-Gro and Cotton agree to use the current property to highlight the benefits of what having a licensed dispensary is to the community and once relocated Inda-Gro/Cotton would agree to continue to promote the new dispensary as an example of seed to sale retail distribution as well as identify other investment opportunities that develop from interested parties having toured our facilities and wishing to establish similar operations.

- 6) GERL may wish to have interested parties tour the current and new property for Inda-Gro 151 Farms. This too is acceptable and under this Agreement would be a mutual collaboration and strategic alliance in terms of the farming and cultivation aspects provided by Inda-Gro and the Site Acquisition, Design/Build Construction and Retail Cannabis Services provided by GERL for those future contracts.

TOTAL PRICE: Four Hundred Thousand and 00/100 (\$ 400,000.00)

I/we accept the Service Agreement Contract as detailed and do hereby agree to the Terms as set forth herein:

Sign: _____ Print Name: _____ Date: _____
Darryl Cotton, President

Sign: _____ Print Name: _____ Date: _____
Larry Geraci

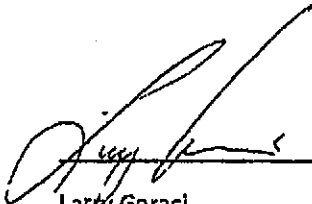
Exhibit 2


11/02/2016

Agreement between Larry Geraci or assignee and Darryl Cotton:

Darryl Cotton has agreed to sell the property located at 6176 Federal Blvd, CA for a sum of \$800,000.00 to Larry Geraci or assignee on the approval of a Marijuana Dispensary. (CUP for a dispensary)

Ten Thousand dollars (cash) has been given in good faith earnest money to be applied to the sales price of \$800,000.00 and to remain in effect until license is approved. Darryl Cotton has agreed to not enter into any other contacts on this property.



Larry Geraci

Darryl Cotton

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of San Diego

On November 2, 2010 before me, Jessica Newell Notary Public
(Insert name and title of the officer)

personally appeared Darryl Cotton and Larry Cerasi
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Jessica Newell

(Seal)



Exhibit 3



Darryl Cotton <indagroddarryl@gmail.com>

Agreement

Larry Geraci <Larry@tfcad.net>
To: Darryl Cotton <darryl@inda-gro.com>

Wed, Nov 2, 2016 at 9:13 PM

No no problem at all

Sent from my iPhone

On Nov 2, 2016, at 6:55 PM, Darryl Cotton <darryl@inda-gro.com> wrote;

Hi Larry,

Thank you for meeting today. Since we executed the Purchase Agreement in your office for the sale price of the property I just noticed the 10% equity position in the dispensary was not language added into that document. I just want to make sure that we're not missing that language in any final agreement as it is a factored element in my decision to sell the property. I'll be fine if you would simply acknowledge that here in a reply,

Regards,

Darryl Cotton, President



darryl@inda-gro.com
www.inda-gro.com
Ph: 877.462.2244
Cell: 619.954.4447
Skype: dc.dalberda

6176 Federal Blvd.
San Diego, CA 92114
USA

NOTICE: The information contained in the above message is confidential information solely for the use of the intended recipient. If the reader of this message is not the intended recipient, the reader is notified that any use, dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify Inda-Gro immediately by telephone at 619.266.4004.

[Quoted text hidden]

Exhibit 4



Darryl Cotton <Indagroddarryl@gmail.com>

Federal Blvd Property

Larry Geraci <Larry@tfcsl.net>
To: Darryl Cotton <darryl@inda-gro.com>

Mon, Feb 27, 2017 at 8:49 AM

Hi Daryl,

Attached is the draft purchase of the property for 400k. The additional contract for the 400k should be in today and I will forward it to you as well.

Best Regards,

Larry E. Geraci, EA

Tax & Financial Center, Inc

5402 Ruffin Rd, Ste 200

San Diego, Ca 92123

Web: Larrygeraci.com

Bus: 858.576.1040


Fax: 858.630.3900

Circular 230 Disclaimer:

<https://mail.google.com/mail/u/0/?ui=2&ik=505cbcf73f&view=pt&msg=15a8079e39521b...> 4/26/2017

GER0214

IRS regulations require us to advise you that, unless otherwise specifically noted, any federal tax advice in this communication (including any attachments, enclosures, or other accompanying materials) was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penalties; furthermore, this communication was not intended or written to support the promotion or marketing of any of the transactions or matters it addresses. This email is considered a confidential communication and is intended for the person or firm identified above. If you have received this in error, please contact us at (858)576-1040 and return this to us or destroy it immediately. If you are in possession of this confidential information, and you are not the intended recipient, you are hereby notified that any unauthorized disclosure, copying, distribution or dissemination of the contents hereof is strictly prohibited. Please notify the sender of this facsimile immediately and arrange for the return or destruction of this facsimile and all attachments.

 17-0226 Fed Blvd Comm Purchase v3 (First Draft).pdf
347K

AGREEMENT OF PURCHASE AND SALE OF REAL PROPERTY

THIS AGREEMENT OF PURCHASE AND SALE OF REAL PROPERTY ("Agreement") is made and entered into this _____ day of _____, 2017, by and between DARRYL COTTON, an individual resident of San Diego, CA ("Seller"), and 6176 FEDERAL BLVD TRUST dated _____, 2017, or its assignee ("Buyer").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually covenanted and agreed by Seller and Buyer as follows:

1. **DEFINITIONS.** For the purposes of this Agreement the following terms will be defined as follows:

a. **"Real Property":** That certain real property commonly known as 6176 Federal Blvd., San Diego, California, as legally described in Exhibit "A" attached hereto and made a part hereof.

b. **"Date of Agreement":** The latest date of execution of the Seller or the Buyer, as indicated on the signature page.

c. **"Purchase Price":** The Purchase Price for the Property (defined below) is Four Hundred Thousand Dollars (\$400,000.00).

d. **"Due Diligence Period":** The period that expires at 5:00 p.m., California time, on the date the CUP (defined below) is issued to Buyer or its designated assign.

e. **"Escrow Agent":** The Escrow Agent is: [NAME]

f. **"Title Company":** The Title Company is: [NAME]

g. **"Title Approval Date":** The Title Approval Date shall be twenty (20) days following Buyer's receipt of a Preliminary Title Report and all underlying documents.

h. **"Closing", "Closing Date" and "Close of Escrow":** These terms are used interchangeably in this Agreement. The closing shall occur on or at 5:00 p.m., California time, on the date fifteen (15) days from the date Buyer or its designated assign is approved by the city of San Diego for a conditional use permit to distribute medical marijuana from the Real Property ("CUP"). Notwithstanding the foregoing, in no event shall Closing occur later than March 1, 2018, unless mutually agreed by the parties.

i. **"Notices"** will be sent as follows to:

Buyer: 6176 Federal Blvd. Trust
6176 Federal Blvd.

San Diego, California 92114

Attn:

Fax No.:

Phone No.:

with a copy to:

Austin Legal Group, APC
3990 Old Town Ave, A-112
San Diego, CA 92110,

Seller:

Darryl Cotton
Address:
City, State, Zip
Attn:
Fax No.:
Phone No.:

Escrow Agent:

[NAME]
[ADDRESS]

2. PURCHASE AND SALE. Subject to all of the terms and conditions of this Agreement and for the consideration set forth, upon Closing Seller shall convey to Buyer, and Buyer shall purchase from Seller, all of the following:

a. The Real Property and all of Seller's interest in all buildings, improvements, facilities, fixtures and paving thereon or associated therewith (collectively, the "Improvements"), together with all easements, hereditaments and appurtenances thereto, subject only to the Permitted Exceptions in accordance with Section 5.b;

b. All other right, title and interest of Seller constituting part and parcel of the Property (hereinafter defined), including, but not limited to, all lease rights, agreements, easements, licenses, permits, tract maps, subdivision/condominium filings and approvals, air rights, sewer agreements, water line agreements, utility agreements, water rights, oil, gas and mineral rights, all licenses and permits related to the Property, and all plans, drawings, engineering studies located within, used in connection with, or related to the Property, if any in Seller's possession (collectively, the "Intangibles"). (Reference herein to the "Property" shall include the Real Property, Improvements, and Intangibles).

3. PURCHASE PRICE AND PAYMENT; DEPOSIT. The Purchase Price will be paid as follows:

a. Deposit. There shall be no Deposit required. It is acknowledged and agreed that Buyer has provided Seller alternative consideration in lieu of the Deposit.

b. Cash Balance. Buyer shall deposit into Escrow the cash balance of the Purchase Price, plus or minus prorations and costs pursuant to Section 15, in the form of cash, bank

cashier's check or confirmed wire transfer of funds not less than one (1) business day prior to the Close of Escrow.

4. ESCROW.

a. Execution of Form Escrow Instructions. Seller shall deposit this Agreement with Escrow Agent upon full execution of same by Buyer and Seller, at which time escrow (the "Escrow") shall be deemed to be opened. Escrow Agent shall thereafter promptly execute the original of this Agreement, provide copies thereof to Buyer and Seller. Immediately upon receipt of such duly executed copy of this Agreement, Escrow Agent shall also notify Seller and Buyer of the opening of Escrow. This Agreement shall act as escrow instructions to Escrow Agent, and Escrow Agent shall hereby be authorized and instructed to deliver the documents and monies to be deposited into the Escrow pursuant to the terms of this Agreement. Escrow Agent shall prepare the Escrow Agent's standard-form escrow agreement (if such a form is required by Escrow Agent), which shall, to the extent that the same is consistent with the terms hereof and approved by Seller and Buyer and not exculpate Escrow Agent from acts of negligence and/or willful misconduct, inure to the benefit of Escrow Agent. Said standard form escrow instructions shall be executed by Buyer and Seller and returned to Escrow Agent within three (3) business days from the date same are received from Escrow Agent. To the extent that Escrow Agent's standard-form escrow agreement is inconsistent with the terms hereof, the terms of this Agreement shall control. Should either party fail to return the standard form escrow instructions to Escrow Agent in a timely manner, such failure shall not constitute a material breach of this Agreement.

b. Close of Escrow. Except as provided below, Escrow shall close no later than the date provided for in Section 1, above.

c. Failure to Receive CUP. Should Buyer be denied its application for the CUP or otherwise abandon its CUP application, it shall have the option to terminate this Agreement by written notice to Seller, and the parties shall have no further liability to one another, except for the "Buyer's Indemnity" (as detailed in Section 8 below).

5. TITLE MATTERS.

a. Preliminary Title Report/Review of Title. As soon as practicable, but in no event later than five (5) business days after the Date of Agreement, Escrow Agent shall have delivered or shall cause to be delivered to Buyer a Preliminary Title Report issued by Title Company covering the Property (the "Preliminary Title Report"), together with true copies of all documents evidencing matters of record shown as exceptions to title thereon. Buyer shall have the right to object to any exceptions contained in the Preliminary Title Report and thereby disapprove the condition of title by giving written notice to Seller on or before the Title Approval Date as defined in Section 1. Any such disapproval shall specify with particularity the defects Buyer disapproves. Buyer's failure to timely disapprove in writing shall be deemed an approval of all exceptions. If Buyer disapproves of any matter affecting title, Seller shall have the option to elect to (i) cure or remove any one or more of such exceptions by notifying Buyer within five (5) business days from Seller's receipt of Buyer's disapproval, or (ii) terminate this Agreement, in which event Buyer shall receive a refund of its Deposit and all accrued interest, and the parties shall have no

further liability to one another, except for the Buyer's Indemnity. Seller's failure to timely notify Buyer of its election, as provided above, shall conclusively be deemed to be Seller's election to terminate this Agreement. For three (3) business days following Seller's actual or deemed election to terminate this Agreement, Buyer shall have the right to waive, in writing, any one or more of such title defects that Seller has not elected to cure or remove and thereby rescind Seller's election to terminate and close Escrow, taking title to the Property subject to such title exceptions.

b. Permitted Exceptions. The following exceptions shown on the Preliminary Title Report (the "Permitted Exceptions") are approved by Buyer:

(1) Real property taxes not yet due and payable as of the Closing Date, which shall be apportioned as hereinafter provided in Section 15;

(2) Unpaid installments of assessments not due and payable on or before the Closing Date;

(3) Any matters affecting the Property that are created by, or with the written consent of, Buyer;

(4) The pre-printed exclusions and exceptions that appear in the Owner's Title Policy issued by the Title Company; and

(5) Any matter to which Buyer has not delivered a notice of a Title Objection in accordance with the terms of Section 5.a hereof.

Notwithstanding the foregoing or anything else to the contrary, Seller shall be obligated, regardless of whether Buyer objects to any such item or exception, to remove or cause to be removed on or before Closing, any and all mortgages, deeds of trust or similar liens securing the repayment of money affecting title to the Property, mechanic's liens, materialmen's liens, judgment liens, liens for delinquent taxes and/or any other liens or security interests ("Mandatory Cure Items").

c. Title Policy. The Title Policy shall be an ALTA Standard Owners Policy with liability in the amount of the Purchase Price, showing fee title to the Property as vested in Buyer, subject only to the Permitted Exceptions. At Buyer's election, the Title Policy to be delivered to Buyer shall be an ALTA Extended Owners Policy, provided that the issuance of said ALTA Policy does not delay the Close of Escrow. The issuance by Title Company of the standard Title Policy in favor of Buyer, insuring fee title to the Property to Buyer in the amount of the Purchase Price, subject only to the Permitted Exceptions, shall be conclusive evidence that Seller has complied with any obligation, express or implied, to convey good and marketable title to the Property to Buyer.

d. Title and Survey Costs. The cost of the standard portion of the premium for the Title Policy shall be paid by the Seller. Buyer shall pay for the survey, if necessary, and the premium for the ALTA portion of the Title Policy and all endorsements requested by Buyer.

6. SELLER'S DELIVERY OF SPECIFIED DOCUMENTS. Seller has provided to Buyer those necessary documents and materials respecting the Property identified on Exhibit "B", attached hereto and made a part hereof ("Property Information"). The Property Information shall include, inter alia, all disclosures from Seller regarding the Property required by California and federal law.

7. DUE DILIGENCE. Buyer shall have through the last day of the Due Diligence Period, as defined in Section 1, in which to examine, inspect, and investigate the Property Information, the Property and any other relating to the Property or its use and or Compliance with any applicable zoning ordinances, regulations, licensing or permitting affecting its use or Buyer's intention use and, in Buyer's sole discretion) and, in Buyer's sole and absolute judgment and discretion, to determine whether the Property is acceptable to Buyer in its present condition and to obtain all necessary internal approvals. Notwithstanding anything to the contrary in this Agreement, Buyer may terminate this Agreement by giving notice of termination (a "Due Diligence Termination Notice") to Seller on or before the last day of the Due Diligence Period, in which event Buyer shall receive the immediate return of the Deposit and this Agreement shall terminate, except that Buyer's Indemnities set forth on Section 8, shall survive such termination.

8. PHYSICAL INSPECTION: BUYERS INDEMNITIES.

a. Buyer shall have the right, upon reasonable notice and during regular business hours, to physically inspect on a non-intrusive basis, and to the extent Buyer desires, to cause one or more representatives of Buyer to physically inspect on a non-intrusive basis, the Property without interfering with the occupants or operation of the Property Buyer shall make all inspections in good faith and with due diligence. All inspection fees, appraisal fees, engineering fees and other expenses of any kind incurred by Buyer relating to the inspection of the Property will be solely Buyer's expense. Seller shall cooperate with Buyer in all reasonable respects in making such inspections. To the extent that a Phase I environmental assessment acceptable to Seller justifies it, Buyer shall have the right to have an independent environmental consultant conduct an environmental inspection in excess of a Phase I assessment of the Property. Buyer shall notify Seller not less than one (1) business day in advance of making any inspections or interviews. In making any inspection or interviews hereunder, Buyer will treat, and will cause any representative of Buyer to treat, all information obtained by Buyer pursuant to the terms of this Agreement as strictly confidential except for such information which Buyer is required to disclose to its consultants, attorneys, lenders and transferees.

b. Buyer agrees to keep the Property free and clear of all mechanics' and materialmen's liens or other liens arising out of any of its activities or those of its representatives, agents or contractors. Buyer shall indemnify, defend (through legal counsel reasonably acceptable to Seller), and hold Seller, and the Property, harmless from all damage, loss or liability, including without limitation attorneys' fees and costs of court, mechanics' liens or claims, or claims or assertions thereof arising out of or in connection with the entry onto, or occupation of the Property by Buyer, its agents, employees and contractors and subcontractors. This indemnity shall survive the sale of the Property pursuant to the terms of this Agreement or, if such sale is not consummated, the termination of this Agreement. After each such inspection or investigation of the Property,

Buyer agrees to immediately restore the Property or cause the Property to be restored to its condition before each such inspection or investigation took place, at Buyer's sole expense.

9. COVENANTS OF SELLER. During the period from the Date of Agreement until the earlier of termination of the Agreement or the Close of Escrow, Seller agrees to the following:

a. Seller shall not permit or suffer to exist any new encumbrance, charge or lien or allow any easements affecting all or any portion of the Property to be placed or claimed upon the Property unless such encumbrance, charge, lien or easement has been approved in writing by Buyer or unless such monetary encumbrance, charge or lien will be removed by Seller prior to the Close of Escrow.

b. Seller shall not execute or amend, modify, renew, extend or terminate any contract without the prior written consent of Buyer, which consent shall not be unreasonably withheld. If Buyer fails to provide Seller with notice of its consent or refusal to consent, Buyer shall be deemed to have approved such contract or modification, except that no contract entered into by Seller shall be for a period longer than thirty (30) days and shall be terminable by the giving of a thirty (30) day notice.

c. Seller shall notify Buyer of any new matter that it obtains actual knowledge of affecting title in any manner, which was not previously disclosed to Buyer by the Title Report. Buyer shall notify Seller within five (5) business days of receipt of notice of its acceptance or rejection of such new matter. If Buyer rejects such matter, Seller shall notify Buyer within five (5) business days whether it will cure such matter. If Seller does not elect to cure such matter within such period, Buyer may terminate this Agreement or waive its prior disapproval within three (3) business days.

10. REPRESENTATIONS OF SELLER.

a. Seller represents and warrants to Buyer that:

(1) The execution and delivery by Seller of, and Seller's performance under, this Agreement are within Seller's powers and have been duly authorized by all requisite action.

(2) This Agreement constitutes the legal, valid and binding obligation of Seller, enforceable in accordance with its terms, subject to laws applicable generally to applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles affecting or limiting the right of contracting parties generally.

(3) Performance of this Agreement by Seller will not result in a breach of, or constitute any default under any agreement or instrument to which Seller is a party, which breach or default will adversely affect Seller's ability to perform its obligations under this Agreement.

(4) To Seller's knowledge, without duty of inquiry, the Property is not presently the subject of any condemnation or similar proceeding, and to Seller's knowledge, no such condemnation or similar proceeding is currently threatened or pending.

(5) To Seller's knowledge, there are no management, service, supply or maintenance contracts affecting the Property which shall affect the Property on or following the Close of Escrow except as set forth in Exhibit "C" attached hereto and made a part hereof.

(6) Seller is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code of 1986 (*i.e.*, Seller is not a non-resident alien, foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined in the Code and regulations promulgated).

(7) Seller (a) is not in receivership; (b) has not made any assignment related to the Property for the benefit of creditors; (c) has not admitted in writing its inability to pay its debts as they mature; (d) has not been adjudicated a bankrupt; (e) has not filed a petition in voluntary bankruptcy, a petition or answer seeking reorganization, or an arrangement with creditors under the Federal Bankruptcy Law or any other similar law or statute of the United States or any state, and (f) does not have any such petition described in Clause (e) hereof filed against Seller.

(8) Seller has not received written notice, nor to the best of its knowledge is it aware, of any actions, suits or proceedings pending or threatened against Seller which affect title to the Property, or which would question the validity or enforceability of this Agreement or of any action taken by Seller under this Agreement, in any court or before any governmental authority, domestic or foreign.

(9) Unless otherwise disclosed herein in Exhibit D, to Seller's knowledge without duty of inquiry, there does not exist any conditions or pending or threatening lawsuits which would materially affect the Property, including but not limited to, underground storage, tanks, soil and ground water.

(10) That Seller has delivered to Buyer all written information, records, and studies in Seller's possession concerning hazardous, toxic, or governmentally regulated materials that are or have been stored, handled, disposed of, or released on the Property.

b. If after the expiration of the Due Diligence Period but prior to the Closing, Buyer or any of Buyer's partners, members, trustees and any officers, directors, employees, agents, representatives and attorneys of Buyer, its partners, members or trustees (the "Buyer's Representatives") obtains knowledge that any of the representations or warranties made herein by Seller are untrue, inaccurate or incorrect in any material respect, Buyer shall give Seller written notice thereof within three (3) business days of obtaining such knowledge (but, in any event, prior to the Closing). If at or prior to the Closing, Seller obtains actual knowledge that any of the representations or warranties made herein by Seller are untrue, inaccurate or incorrect in any material respect, Seller shall give Buyer written notice thereof within three (3) business days of obtaining such knowledge (but, in any event, prior to the Closing). In such cases, Buyer, may elect either (a) to consummate the transaction, or (b) to terminate this Agreement by written notice given

to Seller on the Closing Date, in which event this Agreement shall be terminated, the Property Information returned to the Seller and, thereafter, neither party shall have any further rights or obligations hereunder except as provided in any section hereof that by its terms expressly provides that it survives the termination of this Agreement.

c. The representations of Seller set forth herein shall survive the Close of Escrow for a period of twelve (12) months.

11. REPRESENTATIONS AND WARRANTIES BY BUYER.

a. Buyer represents and warrants to Seller that:

(9) Buyer is duly organized and legally existing, the execution and delivery by Buyer of, and Buyer's performance under, this Agreement are within Buyer's organizational powers, and Buyer has the authority to execute and deliver this Agreement.

(10) This Agreement constitutes the legal, valid and binding obligation of Buyer enforceable in accordance with its terms, subject to laws applicable generally to applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles affecting or limiting the rights of contracting parties generally.

(11) Performance of this Agreement will not result in any breach of, or constitute any default under, any agreement or other instrument to which Buyer is a party, which breach or default will adversely affect Buyer's ability to perform its obligations under this Agreement.

(12) Buyer (a) is not in receivership or dissolution, (b) has not made any assignment for the benefit of creditors, (c) has not admitted in writing its inability to pay its debts as they mature, (d) has not been adjudicated a bankrupt, (e) has not filed a petition in voluntary bankruptcy, a petition or answer seeking reorganization, or an arrangement with creditors under the federal bankruptcy law, or any other similar law or statute of the United States or any state, or (f) does not have any such petition described in (e) filed against Buyer.

(5) Buyer hereby warrants and agrees that, prior to Closing, Buyer shall (i) conduct all examinations, inspections and investigations of each and every aspect of the Property, (ii) review all relevant documents and materials concerning the Property, and (iii) ask all questions related to the Property, which are or might be necessary, appropriate or desirable to enable Buyer to acquire full and complete knowledge concerning the condition and fitness of the Property, its suitability for any use and otherwise with respect to the Property.

12. DAMAGE. Risk of loss up to and including the Closing Date shall be borne by Seller. Seller shall immediately notify Buyer in writing of the extent of any damage to the Property. In the event of any material damage to or destruction of the Property or any portion thereof, Buyer

may, at its option, by notice to Seller given within ten (10) days after Buyer is notified of such damage or destruction (and if necessary the Closing Date shall be extended to give Buyer the full ten (10) day period to make such election): (i) terminate this Agreement and the Earnest Money shall be immediately returned to Buyer or (ii) proceed under this Agreement, receive any insurance proceeds (including any rent loss insurance applicable to any period on and after the Closing Date) due Seller as a result of such damage or destruction and assume responsibility for such repair, and Buyer shall receive a credit at Closing for any deductible, uninsured or coinsured amount under said insurance policies. If Buyer elects (ii) above, Seller will cooperate with Buyer after the Closing to assist Buyer in obtaining the insurance proceeds from Seller's insurers. If the Property is not materially damaged, then Buyer shall not have the right to terminate this Agreement, but Seller shall at its cost repair the damage before the Closing in a manner reasonably satisfactory to Buyer or if repairs cannot be completed before the Closing, credit Buyer at Closing for the reasonable cost to complete the repair. "Material damage" and "Materially damaged" means damage reasonably exceeding ten percent (10%) of the Purchase Price to repair or that entitles a tenant to terminate its Lease.

13. CONDEMNATION. Seller shall immediately notify Buyer of any proceedings in eminent domain that are contemplated, threatened or instituted by anybody having the power of eminent domain over Property. Within ten (10) days after Buyer receives written notice from Seller of proceedings in eminent domain that are contemplated, threatened or instituted by anybody having the power of eminent domain, and if necessary the Closing Date shall be extended to give Buyer the full ten (10) day period to make such election, Buyer may: (i) terminate this Agreement and the Earnest Money shall be immediately returned to Buyer; or (ii) proceed under this Agreement, in which event Seller shall, at the Closing, assign to Buyer its entire right, title and interest in and to any condemnation award related to the Real Property, and Buyer shall have the sole right during the pendency of this Agreement to negotiate and otherwise deal with the condemning authority in respect of such matter. Buyer shall not have any right or claim to monies relating to Seller's loss of income prior to closing.

14. CLOSING

a. Closing Date. The consummation of the transaction contemplated herein ("Closing") shall occur on or before the Closing Date set forth in Section 1. Closing shall occur through Escrow with the Escrow Agent. Unless otherwise stated herein, all funds shall be deposited into and held by Escrow Agent. Upon satisfaction or completion of all closing conditions and deliveries, the parties shall direct the Escrow Agent to immediately record and deliver the closing documents to the appropriate parties and make disbursements according to the closing statement executed by Seller and Buyer. The Escrow Agent shall agree in writing with Buyer that (1) recordation of the Deed constitutes its representation that it is holding the closing documents, closing funds and closing statements and is prepared and irrevocably committed to disburse the closing funds in accordance with the closing statements and (2) release of funds to the Seller shall irrevocably commit it to issue the Title Policy in accordance with this Agreement.

b. Seller's Deliveries in Escrow. On or prior to the Closing Date, Seller shall deliver in escrow to the Escrow Agent the following:

(13) Deed. A Special Warranty Deed mutually satisfactory to the parties, executed and acknowledged by Seller, conveying to Buyer good, indefeasible and marketable fee simple title to the Property, subject only to the Permitted Exceptions (the "Deed").

(14) Assignment of Intangible Property. Such assignments and other documents and certificates as Buyer may reasonably require in order to fully and completely transfer and assign to Buyer all of Seller's right, title, and interest, in and to the Intangibles, all documents and contracts related thereto, Leases, and any other permits, rights applicable to the Property, and any other documents and/or materials applicable to the Property, if any. Such assignment or similar document shall include an indemnity by Buyer to Seller for all matters relating to the assigned rights, and benefits following the Closing Date.

(3) Assignment and Assumption of Contracts. An assignment and assumption of Leases from Seller to Buyer of landlord's interest in the Leases.

(4) FIRPTA. A non-foreign person affidavit that meets the requirements of Section 1445(b)(2) of the Internal Revenue Code, as amended.

(5) Additional Documents. Any additional documents that may be reasonably required for the consummation of the transaction contemplated by this Agreement.

c. Buyer's Deliveries in Escrow. On or prior to the Closing Date, Buyer shall deliver in escrow to the Escrow Agent the following:

(1) Purchase Price. The Purchase Price, less the Deposits, plus or minus applicable proration, deposited by Buyer with the Escrow Agent in immediate funds wired or deposited for credit into the Escrow Agent's escrow account.

(2) Assumption of Intangible Property. A duly executed assumption of the Assignment referred to in Section 14.b(2).

(3) Authority. Evidence of existence, organization, and authority of Buyer and the authority of the person executing documents on behalf of Buyer reasonably required by the Title Company.

(4) Additional Documents. Any additional documents that may be reasonably required for the consummation of the transaction contemplated by this Agreement.

d. Closing Statements. Seller and Buyer shall each execute and deposit the closing statement, such transfer tax declarations and such other instruments as are reasonably required by the Title Company or otherwise required to close the Escrow and consummate the acquisition of the Property in accordance with the terms hereof. Seller and Buyer hereby designate Escrow Agent as the "Reporting Person" for the transaction pursuant to Section 6045(e) of the Code and the regulations promulgated thereunder and agree to execute such documentation as is reasonably necessary to effectuate such designation.

e. Title Policy. The Escrow Agent shall deliver to Buyer the Title Policy required hereby.

f. Possession. Seller shall deliver possession of the Property to Buyer at the Closing subject to the Permitted Exceptions, and shall deliver to Buyer all keys, security codes and other information necessary for Buyer to assume possession.

g. Transfer of Title. The acceptance of transfer of title to the Property by Buyer shall be deemed to be full performance and discharge of any and all obligations on the part of Seller to be performed pursuant to the provisions of this Agreement, except where such agreements and obligations are specifically stated to survive the transfer of title.

15. COSTS, EXPENSES AND PRORATIONS.

a. Seller Will Pay. At the Closing, Seller shall be charged the following:

- (1) All premiums for an ALTA Standard Coverage Title Policy;
- (2) One-half of all escrow fees and costs;
- (3) Seller's share of prorations; and
- (4) One-half of all transfer taxes.

b. Buyer Will Pay. At the Closing, Buyer shall pay:

- (1) All document recording charges;
- (2) One-half of all escrow fees and costs;
- (3) Additional charge for an ALTA Extended Coverage Title Policy, and the endorsements required by Buyer;
- (4) One-half of all transfer taxes; and
- (5) Buyer's share of prorations.

c. Prorations.

(1) Taxes. All non-delinquent real estate taxes and assessments on the Property will be prorated as of the Closing Date based on the actual current tax bill. If the Closing Date takes place before the real estate taxes are fixed for the tax year in which the Closing Date occurs, the apportionment of real estate taxes will be made on the basis of the real estate taxes for the immediately preceding tax year applied to the latest assessed valuation. All delinquent taxes and all delinquent assessments, if any, on the Property will be paid at the Closing Date from funds accruing to Seller. All supplemental taxes billed after the Closing Date for periods prior to the

Closing Date will be paid promptly by Seller. Any tax refunds received by Buyer which are allocable to the period prior to Closing will be paid by Buyer to Seller.

(2) Utilities. Gas, water, electricity, heat, fuel, sewer and other utilities and the operating expenses relating to the Property shall be prorated as of the Close of Escrow. If the parties hereto are unable to obtain final meter readings as of the Close of Escrow, then such expenses shall be estimated as of the Close of Escrow based on the prior operating history of the Property.

16. CLOSING DELIVERIES.

a. Disbursements And Other Actions by Escrow Agent. At the Closing, Escrow Agent will promptly undertake all of the following:

(1) Funds. Disburse all funds deposited with Escrow Agent by Buyer in payment of the Purchase Price for the Property as follows:

(a) Deliver to Seller the Purchase Price, less the amount of all items, costs and prorations chargeable to the account of Seller; and

(b) Disburse the remaining balance, if any, of the funds deposited by Buyer to Buyer, less amounts chargeable to Buyer.

(2) Recording. Cause the Special Warranty Deed (with documentary transfer tax information to be affixed after recording) to be recorded with the San Diego County Recorder and obtain conformed copies thereof for distribution to Buyer and Seller.

(3) Title Policy. Direct the Title Company to issue the Title Policy to Buyer.

(4) Delivery of Documents to Buyer or Seller. Deliver to Buyer the any documents (or copies thereof) deposited into escrow by Seller. Deliver to Seller any other documents (or copies thereof) deposited into Escrow by Buyer.

17. DEFAULT AND REMEDIES

a. Seller's Default. If Seller fails to comply in any material respect with any of the provisions of this Agreement, subject to a right to cure, or breaches any of its representations or warranties set forth in this Agreement prior to the Closing, then Buyer may:

(1) Terminate this Agreement and neither party shall have any further rights or obligations hereunder, except for the obligations of the parties which are expressly intended to survive such termination; or

(2) Bring an action against Seller to seek specific performance of Seller's obligations hereunder.

b. Buyer's Default - Liquidated Damages. IF BUYER FAILS TO TIMELY COMPLETE THE PURCHASE OF THE PROPERTY AS PROVIDED IN THIS AGREEMENT DUE TO ITS DEFAULT, SELLER SHALL BE RELEASED FROM ITS OBLIGATION TO SELL THE PROPERTY TO BUYER. BUYER AND SELLER HEREBY ACKNOWLEDGE AND AGREE THAT IT WOULD BE IMPRACTICAL AND/OR EXTREMELY DIFFICULT TO FIX OR ESTABLISH THE ACTUAL DAMAGE SUSTAINED BY SELLER AS A RESULT OF SUCH DEFAULT BY BUYER, AND AGREE THAT THE DEPOSITS ARE A REASONABLE APPROXIMATION THEREOF. ACCORDINGLY, IN THE EVENT THAT BUYER FAILS TO COMPLETE THE PURCHASE OF THE PROPERTY AS PROVIDED IN THIS AGREEMENT DUE TO ITS DEFAULT, THE DEPOSIT SHALL CONSTITUTE AND BE DEEMED TO BE THE AGREED AND LIQUIDATED DAMAGES OF SELLER, AND SHALL BE SELLER'S SOLE AND EXCLUSIVE REMEDY. SELLER AGREES TO WAIVE ALL OTHER REMEDIES AGAINST BUYER WHICH SELLER MIGHT OTHERWISE HAVE AT LAW OR IN EQUITY BY REASON OF SUCH DEFAULT BY BUYER. THE LIQUIDATED DAMAGES ARE NOT INTENDED TO BE A FORFEITURE OR PENALTY, BUT ARE INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER.

Seller's Initials

Buyer's Initials

c. Escrow Cancellation Following a Termination Notice. If either party terminates this Agreement as permitted under any provision of this Agreement by delivering a termination notice to Escrow Agent and the other party, Escrow shall be promptly cancelled and, Escrow Agent shall return all documents and funds to the parties who deposited them, less applicable Escrow cancellation charges and expenses. Promptly upon presentation by Escrow Agent, the parties shall sign such instruction and other instruments as may be necessary to effect the foregoing Escrow cancellation.

d. Other Expenses. If this Agreement is terminated due to the default of a party, then the defaulting party shall pay any fees due to the Escrow Agent for holding the Deposits and any fees due to the Title Company in connection with issuance of the Preliminary Title report and other title matters (together, "Escrow Cancellation Charges"). If Escrow fails to close for any reason, other than a default under this Agreement, Buyer and Seller shall each pay one-half (½) of any Escrow Cancellation Charges.

18. MISCELLANEOUS.

a. Entire Agreement. This Agreement, together with the Exhibits and schedules hereto, contains all representations, warranties and covenants made by Buyer and Seller and constitutes the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are replaced in total by this Agreement together with the Exhibits and schedules hereto.

b. Time. Time is of the essence in the performance of each of the parties' respective obligations contained herein.

c. Attorneys' Fees. In the event of any action or proceeding brought by either party against the other under this Agreement, the prevailing party shall be entitled to recover all costs and expenses including its attorneys' fees in such action or proceeding in such amount as the court may adjudge reasonable. The prevailing party shall be determined by the court based upon an assessment of which party's major arguments made or positions taken in the proceedings could fairly be said to have prevailed over the other party's major arguments or positions on major disputed issues in the court's decision. If the party which shall have commenced or instituted the action, suit or proceeding shall dismiss or discontinue it without the concurrence of the other party, such other party shall be deemed the prevailing party.

d. Assignment. Buyer's rights and obligations hereunder shall be assignable without the prior consent of Seller.

e. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

f. Confidentiality and Return of Documents. Buyer and Seller shall each maintain as confidential any and all material obtained about the other or, in the case of Buyer, about the Property or its operations, this Agreement or the transactions contemplated hereby, and shall not disclose such information to any third party. Except as may be required by law, Buyer will not divulge any such information to other persons or entities including, without limitation, appraisers, real estate brokers, or competitors of Seller. Notwithstanding the foregoing, Buyer shall have the right to disclose information with respect to the Property to its officers, directors, employees, attorneys, accountants, environmental auditors, engineers, potential lenders, and permitted assignees under this Agreement and other consultants to the extent necessary for Buyer to evaluate its acquisition of the Property provided that all such persons are told that such information is confidential and agree (in writing for any third party engineers, environmental auditors or other consultants) to keep such information confidential. If Buyer acquires the Property from Seller, either party shall have the right, subsequent to the Closing of such acquisition, to publicize the transaction (other than the parties to or the specific economics of the transaction) in whatever manner it deems appropriate; provided that any press release or other public disclosure regarding this Agreement or the transactions contemplated herein, and the wording of same, must be approved in advance by both parties, which approval shall not be unreasonably withheld. The provisions of this section shall survive the Closing or any termination of this Agreement. In the event the transaction contemplated by this Agreement does not close as provided herein, upon the request of Seller, Buyer shall promptly return to Seller all Property Information and all other documents, reports and records obtained by Buyer in connection with the investigation of the Property.

g. Interpretation of Agreement. The article, section and other headings of this Agreement are for convenience of reference only and shall not be construed to affect the meaning of any provision contained herein. Where the context so requires, the use of the singular shall include the plural and vice versa and the use of the masculine shall include the feminine and the neuter. The term "person"—shall—include—any individual,—partnership,—joint—venture,—corporation,—trust,—unincorporated association, any other entity and any government or any department or agency thereof, whether acting in an individual, fiduciary or other capacity.

h. Amendments. This Agreement may be amended or modified only by a written instrument signed by Buyer and Seller.

i. Drafts Not an Offer to Enter Into a Legally Binding Contract. The parties hereto agree that the submission of a draft of this Agreement by one party to another is not intended by either party to be an offer to enter into a legally binding contract with respect to the purchase and sale of the Property. The parties shall be legally bound with respect to the purchase and sale of the Property pursuant to the terms of this Agreement only if and when both Seller and Buyer have fully executed and delivered to each other a counterpart of this Agreement (or a copy by facsimile transmission).

j. No Partnership. The relationship of the parties hereto is solely that of Seller and Buyer with respect to the Property and no joint venture or other partnership exists between the parties hereto. Neither party has any fiduciary relationship hereunder to the other.

k. No Third Party Beneficiary. The provisions of this Agreement are not intended to benefit any third parties.

l. Survival. Except as expressly set forth to the contrary herein, no representations, warranties, covenants or agreements of Seller contained herein shall survive the Closing.

m. Invalidity and Waiver. If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible the remainder of this Agreement shall be deemed valid and operative, and effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Agreement shall be deemed not to be a waiver of such party's right to enforce against the other party the same or any other such term or provision, unless made in writing.

n. Notices. All notices required or permitted hereunder shall be in writing and shall be served on the parties at the addresses set forth in Section 1. Any such notices shall be either (a) sent by overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered one business day after deposit with such courier, (b) sent by telefax or electronic mail, in which case notice shall be deemed delivered upon confirmation of delivery if sent prior to 5:00 p.m. on a business day (otherwise, the next business day), or (c) sent by personal delivery, in which case notice shall be deemed delivered upon receipt. A party's address may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice. Notices given by counsel to the Buyer shall be deemed given by Buyer and notices given by counsel to the Seller shall be deemed given by Seller.

o. Calculation of Time Periods. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included,

unless such last day is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. The last day of any period of time described herein shall be deemed to end at 5:00 p.m. California time.

p. Brokers. The parties represent and warrant to each other that no broker or finder was instrumental in arranging or bringing about this transaction.

q. Procedure for Indemnity. The following provisions govern actions for indemnity under this Agreement. Promptly after receipt by an indemnitee of notice of any claim, such indemnitee will, if a claim in respect thereof is to be made against the indemnitor, deliver to the indemnitor written notice thereof and the indemnitor shall have the right to participate in, and, if the indemnitor agrees in writing that it will be responsible for any costs, expenses, judgments, damages and losses incurred by the indemnitee with respect to such claim, to assume the defense thereof with counsel mutually satisfactory to the parties; provided, however, that an indemnitee shall have the right to retain its own counsel, with the fees and expenses to be paid by the indemnitor, if the indemnitee reasonably believes that representation of such indemnitee by the counsel retained by the indemnitor would be inappropriate due to actual or potential differing interests between such indemnitee and any other party represented by such counsel in such proceeding. The failure to deliver written notice to the indemnitor within a reasonable time of notice of any such claim shall relieve such indemnitor of any liability to the indemnitee under this indemnity only if and to the extent that such failure is prejudicial to its ability to defend such action, and the omission so to deliver written notice to the indemnitor will not relieve it of any liability that it may have to any indemnitee other than under this indemnity. If an indemnitee settles a claim without the prior written consent of the indemnitor, then the indemnitor shall be released from liability with respect to such claim unless the indemnitor has unreasonably withheld or delayed such consent.

r. Further Assurances. In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by the parties hereto at Closing, Buyer and Seller each agree to perform, execute and deliver, but without any obligation to incur any additional liability or expense, on or after the Closing any further deliveries and assurances as may be reasonably necessary to consummate the transactions contemplated hereby.

s. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Agreement. To facilitate execution of this Agreement, the parties may execute and exchange by telephone facsimile counterparts of the signature pages.

t. Section 1031 Exchange. Either party may consummate the purchase or sale (as applicable) of the Property as part of a so-called like kind exchange (an "Exchange") pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended (the "Code"), provided that: (a) the Closing shall not be delayed or affected by reason of the Exchange nor shall the consummation or accomplishment of an Exchange be a condition precedent or condition subsequent to the exchanging party's obligations under this Agreement; (b) the exchanging party shall effect its Exchange through an assignment of this Agreement, or its rights under this Agreement, to a qualified intermediary (c) neither party shall be required to take an assignment of the purchase

agreement for relinquished or replacement property or be required to acquire or hold title to any real property for purposes of consummating an Exchange desired by the other party; and (d) the exchanging party shall pay any additional costs that would not otherwise have been incurred by the non-exchanging party had the exchanging party not consummated the transaction through an Exchange. Neither party shall by this Agreement or, acquiescence to an Exchange desired by the other party, have its rights under this Agreement affected or diminished in any manner or be responsible for compliance with or be deemed to have warranted to the exchanging party that its Exchange in fact complies with Section 1031 of the Code.

u. Incorporation of Recitals/Exhibits. All recitals set forth herein above and the exhibits attached hereto and referred to herein are incorporated in this Agreement as though fully set forth herein.

v. Partial Invalidity. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect and shall in no way be impaired or invalidated, and the parties agree to substitute for the invalid or unenforceable provision a valid and enforceable provision that most closely approximates the intent and economic effect of the invalid or unenforceable provision.

w. Waiver of Covenants, Conditions or Remedies. The waiver by one party of the performance of any covenant, condition or promise, or of the time for performing any act, under this Agreement shall not invalidate this Agreement nor shall it be considered a waiver by such party of any other covenant, condition or promise, or of the time for performing any other act required, under this Agreement. The exercise of any remedy provided in this Agreement shall not be a waiver of any consistent remedy provided by law, and the provisions of this Agreement for any remedy shall not exclude any other consistent remedies unless they are expressly excluded.

x. Legal Advice. Each party has received independently legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions hereof. The provisions of this Agreement shall be construed as to the fair meaning and not for or against any party based upon any attribution of such party as the sole source of the language in question.

y. Memorandum of Agreement. Buyer and Seller shall execute and notarize the Memorandum of Agreement included herewith as Exhibit E, which Buyer may record with the county of San Diego, in its sole discretion.

SIGNATURE PAGE FOLLOWS

Exhibit 5



Darryl Cotton <indagrodarryl@gmail.com>

Statement

Larry Geraci <Larry@tfcsl.net>
To: Darryl Cotton <darryl@inda-gro.com>

Thu, Mar 2, 2017 at 8:51 AM

Best Regards,

Larry E. Geraci, EA

*Tax & Financial Center, Inc
5402 Ruffin Rd, Ste 200
San Diego, Ca 92123*

Web: Larrygeraci.com

Bus: 858.576.1040

Fax: 858.630.3900

Circular 230 Disclaimer:

IRS regulations require us to advise you that, unless otherwise specifically noted, any federal tax advice in this communication (including any attachments, enclosures, or other accompanying materials) was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penalties; furthermore, this communication was not intended or written to support the promotion or marketing of any of the transactions or matters it addresses. This email is considered a confidential communication and is intended for the person or firm identified above. If you have received this in error, please contact us at (858)576-1040 and return this to us or destroy it immediately. If you are in possession of this confidential information, and you are not the intended

<https://mail.google.com/mail/u/0/?ui=2&ik=505cbcf73f&view=pt&msg=15a8feeb8924dfa...> 4/26/2017

GER0234

recipient, you are hereby notified that any unauthorized disclosure, copying, distribution or dissemination of the contents hereof is strictly prohibited. Please notify the sender of this facsimile immediately and arrange for the return or destruction of this facsimile and all attachments.

 17-0227 Side Agreement unsigned.docx
35K

SIDE AGREEMENT

Dated as of March __, 2017

By and Among

DARRYL COTTON

and

6176 FEDERAL BLVD TRUST

This Side Agreement ("Side Agreement") is made as of the __ day of _____ 2017, by and between Darryl Cotton ("Seller") and 6176 Federal Blvd Trust ("Buyer"), a California trust. Buyer and Seller are sometimes referred to herein as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, the Seller and Buyer desire to enter into a Purchase Agreement (the "Purchase Agreement"), dated of even date herewith, pursuant to which the Seller shall sell to Buyer, and Buyer shall purchase from the Seller, the property located at 6176 Federal Blvd., San Diego, California 92114 (the "Property"); and

WHEREAS, the purchase price for the Property is Four Hundred Thousand Dollars (\$400,000); and

WHEREAS, a condition to the Purchase Agreement is that Buyer and Seller enter into this Side Agreement that addresses the terms under which Seller shall move his existing business located on the Property.

NOW THEREFORE, in consideration of the mutual promises and covenants set forth below, the parties hereto agree as follows:

ARTICLE I

1. Terms of the Side Agreement

1.1. Buyer shall pay Four Hundred Thousand Dollars (\$400,000) to cover Seller's expenses related to moving and re-establishing his business ("Payment Price").

1.2. The Payment Price is contingent on close of escrow pursuant to the Purchase Agreement.

ARTICLE II

2. Closing Conditions

2.1. Within ten (10) business days from the close of escrow on the Property, Buyer shall pay the Payment Price by wire transfer to an account provided by the Seller (see section 2.3); and

2.2. A condition precedent to the payment of the Payment Price is receipt by the Buyer of Seller's written representation that Seller has relocated his business and vacated the Property; and

2.3. If escrow does not close on the Property, the Side Agreement shall terminate in accordance with the terms of the Purchase Agreement and no payment is due or owing from Buyer to Seller.

ARTICLE III

3. General Provisions

3.1. This Side Agreement, together with the Purchase Agreement and any Exhibits and schedules hereto, contain all representations, warranties and covenants made by Buyer and Seller and constitutes the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements, in relation to this Side Agreement are replaced in total by this Side Agreement together with the Purchase Agreement, Exhibits and schedules hereto.

3.2. Time. Time is of the essence in the performance of each of the parties' respective obligations contained herein.

3.3. Wire Instructions. Buyer shall transmit Payment Price via wire transfer to the following account: _____, with the routing number or swift code of: _____, located at the following bank and address: _____.

3.4. Attorneys' Fees. In the event of any action or proceeding brought by either party against the other under this Side Agreement, the prevailing party shall be entitled to recover all costs and expenses including its attorneys' fees in such action or proceeding in such amount as the court may adjudge reasonable. The prevailing party shall be determined by the court based upon an assessment of which party's major arguments made or positions taken in the proceedings could fairly be said to have prevailed over the other party's major arguments or positions on major disputed issues in the court's decision. If the party which shall have commenced or instituted the action, suit or proceeding shall dismiss or discontinue it without the concurrence of the other party, such other party shall be deemed the prevailing party.

3.5. Assignment. Buyer's rights and obligations hereunder shall be assignable without the prior consent of Seller.

3.6. Governing Law. This Side Agreement shall be governed by and construed in accordance with the laws of the State of California.

3.7. Confidentiality and Return of Documents. Buyer and Seller shall each maintain as confidential any and all material obtained about the other or, in the case of Buyer, about the Property or its operations, this Side Agreement or the transactions contemplated hereby, and shall not disclose such information to any third party. Except as may be required by law, Buyer shall not divulge any such information to other persons or entities including, without limitation, appraisers, real estate brokers, or competitors of Seller. Notwithstanding the foregoing, Buyer shall have the right to disclose information with respect to the Property to its officers, directors, employees, attorneys, accountants, environmental auditors, engineers, potential lenders, and permitted assignees under this Side Agreement and other consultants to the extent necessary for Buyer to evaluate its acquisition of the Property provided that all such persons are told that such information is confidential and agree (in writing for any third party engineers, environmental auditors or other consultants) to keep such information confidential. If Buyer acquires the Property from Seller, either party shall have the right, subsequent to the Closing of such acquisition, to publicize the transaction (other than the parties to or the specific economics of the transaction) in whatever manner it deems appropriate; provided that any press release or other public disclosure regarding this Side Agreement or the transactions contemplated herein, and the wording of same, must be approved in advance by both parties, which approval shall not be unreasonably withheld. The provisions of this section shall survive the Closing or any termination of this Side Agreement. In the event the transaction contemplated by this Side Agreement does not close as provided herein, upon the request of Seller, Buyer shall promptly return to Seller all Property Information and all other documents, reports and records obtained by Buyer in connection with the investigation of the Property.

3.8. Interpretation of Side Agreement. The article, section and other headings of this Side Agreement are for convenience of reference only and shall not be construed to affect the meaning of any provision contained herein. Where the context so requires, the use of the singular shall include the plural and vice versa and the use of the masculine shall include the feminine and the neuter. The term "person" shall include any individual, partnership, joint venture, corporation, trust, unincorporated association, any other entity and any government or any department or agency thereof, whether acting in an individual, fiduciary or other capacity.

3.9. Amendments. This Side Agreement may be amended or modified only by a written instrument signed by Buyer and Seller.

3.10. Drafts Not an Offer to Enter Into a Legally Binding Contract. The parties hereto agree that the submission of a draft of this Side Agreement by one party to another is not intended by either party to be an offer to enter into a legally binding contract with respect to the purchase and sale of the Property. The parties shall be legally bound with respect to the purchase and sale of the Property pursuant to the terms of this Side Agreement only if and when both Seller and Buyer have fully executed and delivered to each other a counterpart of this Side Agreement (or a copy by facsimile transmission).

however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice. Notices given by counsel to the Buyer shall be deemed given by Buyer and notices given by counsel to the Seller shall be deemed given by Seller.

3.15. Calculation of Time Periods. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. The last day of any period of time described herein shall be deemed to end at 5:00 p.m. California time.

3.16. Brokers. The parties represent and warrant to each other that no broker or finder was instrumental in arranging or bringing about this transaction.

3.17. Further Assurances. In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by the parties hereto at Closing, Buyer and Seller each agree to perform, execute and deliver, but without any obligation to incur any additional liability or expense, on or after the Closing any further deliveries and assurances as may be reasonably necessary to consummate the transactions contemplated hereby.

3.18. Execution in Counterparts. This Side Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Side Agreement. To facilitate execution of this Side Agreement, the parties may execute and exchange by telephone facsimile counterparts of the signature pages.

3.19. Incorporation of Recitals/Exhibits. All recitals set forth herein above and the exhibits attached hereto and referred to herein are incorporated in this Side Agreement as though fully set forth herein.

3.20. Waiver of Covenants, Conditions or Remedies. The waiver by one party of the performance of any covenant, condition or promise, or of the time for performing any act, under this Side Agreement shall not invalidate this Side Agreement nor shall it be considered a waiver by such party of any other covenant, condition or promise, or of the time for performing any other act required, under this Side Agreement. The exercise of any remedy provided in this Side Agreement shall not be a waiver of any consistent remedy provided by law, and the provisions of this Side Agreement for any remedy shall not exclude any other consistent remedies unless they are expressly excluded.

3.21. Legal Advice. Each party has independently received legal advice from its attorneys with respect to the advisability of executing this Side Agreement and the meaning of the provisions hereof. The provisions of this Side Agreement shall be construed as to the fair meaning and not for or against any party based upon any attribution of such party as the sole source of the language in question.

IN WITNESS WHEREOF, the parties hereto have executed this Side Agreement, in duplicate originals, by their respective officers hereunto duly authorized, the day and year herein written.

BUYER:

6176 FEDERAL BLVD. TRUST

SELLER:

DARRYL COTTON:

By: _____

Printed: _____

Its: Trustee

Exhibit 6



Darryl Cotton <indagrodarryl@gmail.com>

Statement

Darryl Cotton <indagrodarryl@gmail.com>

Fri, Mar 3, 2017 at 8:22 AM

To: Larry Geraci <Larry@tfcisd.net>

Larry,

I read the Side Agreement in your attachment and I see that no reference is made to the 10% equity position as per my Inda-Gro GERL Service Agreement (see attached) in the new store. In fact para 3.11 looks to avoid our agreement completely. It looks like counsel did not get a copy of that document. Can you explain?

[Quoted text hidden]



IndaGro-GERL Service Contract.doc

691K

Exhibit 7

Larry E. Geraci, EA

Tax & Financial Center, Inc

5402 Ruffin Rd, Ste 200

San Diego, Ca 92123

Web: Larrygeraci.com

Bus: 858.576.1040

Fax: 858.630.3900

Circular 230 Disclaimer:

IRS regulations require us to advise you that, unless otherwise specifically noted, any federal tax advice in this communication (including any attachments, enclosures, or other accompanying materials) was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penalties; furthermore, this communication was not intended or written to support the promotion or marketing of any of the transactions or matters it addresses. This email is considered a confidential communication and is intended for the person or firm identified above. If you have received this in error, please contact us at (858)576-1040 and return this to us or destroy it immediately. If you are in possession of this confidential information, and you are not the intended recipient, you are hereby notified that any unauthorized disclosure, copying, distribution or dissemination of the contents hereof is strictly prohibited. Please notify the sender of this facsimile immediately and arrange for the return or destruction of this facsimile and all attachments.

From: Darryl Cotton [mailto:indagrodarryl@gmail.com]

Sent: Friday, March 17, 2017 2:16 PM

To: Larry Geraci <Larry@tfcscd.net>

Subject: Re: Contract Review

Larry, I received your text asking to meet in person tomorrow. I would prefer that until we have final agreements, that we converse exclusively via email. My greatest concern is that you will get a denial on the CUP application and not provide the remaining \$40,000 non-refundable deposit. To be frank, I feel that you are not dealing with me in good faith, you told me repeatedly that you could not submit a CUP application until certain zoning issues had been resolved and that you had spent hundreds of thousands of dollars on getting them resolved. You lied to me, I found out yesterday from the City of San Diego that you submitted a CUP application on October 31, 2016 BEFORE we even signed our agreement on the 2nd of November. There is no situation where an oral agreement will convince me that you are dealing with me in good faith and will honor our agreement. We need a final written, legal, binding agreement.

Please confirm, as requested, by 12:00 PM Monday that you are honoring our agreement and will have final drafts

GER0010

(reflecting completely the below) by Wednesday at 12:00 PM.

It is unfortunate that matters have turned out like this, but hearing from the city that the application had been submitted before our deal was signed and that it is already under review, meaning you have been lying to me for months, forces me to take this course of action.

Again, please respond to this email so that there is a clear record of our conversations from this point forward or at least until we have final executed documents.

-Darryl

On Thu, Mar 16, 2017 at 8:23 PM, Darryl Cotton <indagrodarryl@gmail.com> wrote:

Larry,

My apologies ahead of time as I am going to provide frank comments on the agreement so that we can finalize it and get this closed. And, so that you understand where I am coming from, just want to lay out a few of our milestones.

Throughout October we had discussions regarding the sale of my property. We met on 11/2 and agreed upon an \$800,000 purchase price, a \$50,000 non-refundable deposit, a 10% equity stake with a monthly guaranteed minimum \$10,000 payment and to definitive agreements that contained a few other conditions (e.g., I stay at the property if the CUP is issued until construction starts). We executed a good faith agreement that day stating the sale of the property was for the \$800,000 and that as a sign of good faith, you were providing a \$10,000 deposit towards the required \$50,000 non-refundable deposit. That same day you scanned and emailed to me the agreement and I replied and noted that the agreement did not contain the 10% equity stake in the dispensary. I asked you to please respond and confirm via email that a condition of the sale was my 10% equity stake. You did not respond and confirm the 10% as I requested.

Almost 4 months later, on 2/27, you forwarded a draft purchase agreement for the property that again did not contain the agreed upon 10% equity stake, it also does not mention the remaining \$40,000 towards the non-refundable deposit. I called you about this and we spoke.

On 3/2, you forwarded a draft Side Agreement that again did not contain the 10% equity stake. I replied the next day on 3/3 raising the 10% equity issue and attaching the draft services agreement that I drafted that contains some of the terms we had agreed upon.

On 3/7, email below, you forwarded a revised Side Agreement that did contain the 10% equity stake, but in the body of the email you requested that the \$10,000 minimum monthly payment be held off until month 7 and that months 1-6 be reduced to \$5,000 a month. I know from our conversations that you have spent over \$300,000 on lobbying and zoning efforts for this property, which has caused you to be strapped for cash. However, I am not in a position to take a \$5,000 reduction for 6 months.

The long and short of it, we started these negotiations 4 months ago and the drafts and our communications have not reflected what we agreed upon and are still far from reflecting our original agreement. Here is my proposal, please have your attorney Gina revise the Purchase Agreement and Side Agreement to incorporate all the terms we have agreed upon so that we can execute final versions and get this closed.

Please have these terms incorporated into revised drafts:

- The remaining \$40,000 deposit, which is nonrefundable in the event you choose to not close on the property if the CUP is denied. And which is to be provided upon execution of the final agreements.
- If the CUP is granted, my business can remain at the property until the city has finalized the plans and construction begins at the property.
- A 10% equity stake with a minimum guaranteed monthly distribution of \$10,000, whichever is greater.

- A clause that my 10% equity stake carries with it consent rights for any material decisions. Those items that are to require my consent can be standard minority consent rights, but basically that my consent is required for large decisions like the issuance of employee bonus and for agreements with suppliers and vendors that are not done on an arm-lengths basis. A friend of mine said that these are standard "Minority Shareholder Protection Rights."
- A provision requiring that upon the creation of the formation and governance documents of the CUP entity, that there is a requirement that the accounting is to be done by a third-party accounting firm that will also be responsible for calculating my 10% monthly equity distributions.
- The incorporation of all the terms in the MOU that I created that Gina references in the draft purchase agreement.
- Please have Gina delete the clause in the purchase agreement that says both you and I had our own counsel review the agreement. You told me I could just communicate with Gina and though I tried to engage an attorney, I did not ultimately do so for cost reasons.

The intent of all this is to ensure that the agreement we have agreed upon can be executed and verified. Having said all this, I really want to finalize this as soon as possible - I found out today that a CUP application for my property was submitted in October, which I am assuming is from someone connected to you. Although, I note that you told me that the \$40,000 deposit balance would be paid once the CUP was submitted and that you were waiting on certain zoning issues to be resolved. Which is not the case.

Ultimately, the main point is that we were supposed to execute our agreements as soon as possible so that I could receive the total \$50,000 non-refundable deposit and you would take the risk of the non-approval of the CUP. If this keeps dragging on and we do not finalize and execute our agreements, then you may get a denial from the city on the CUP and then simply walk away. At that point, the property having been denied, no other party would be willing to take on that risk. If you are not willing to take on that risk as originally agreed upon, please let me know as there are other parties who would match your terms and be willing to take on that risk.

Please confirm by Monday 12:00 PM whether we are on the same page and you plan to continue with our agreement. Or, if not, so I can return your \$10,000 of the \$50,000 required deposit. If, hopefully, we can work through this, please confirm that revised final drafts that incorporate the terms above will be provided by Wednesday at 12:00 PM. I promise to review and provide comments that same day so we can execute the same or next day.

In anticipation of your reply, I remain,

Darryl Cotton

On Tue, Mar 7, 2017 at 12:05 PM, Larry Geraci <Larry@tfcisd.net> wrote:

Hi Daryl,

I have not reviewed this yet but wanted you to look at it and give me your thoughts. Talking to Matt, the 10k a month might be difficult to hit until the sixth month....can we do 5k, and on the seventh month start 10k?

Best Regards,

Larry E. Geraci, EA

Tax & Financial Center, Inc

5402 Ruffin Rd, Ste 200

San Diego, Ca 92123

Web: Larrygeraci.com

Bus: 858.576.1040

Fax: 858.630.3900

Circular 230 Disclaimer:

IRS regulations require us to advise you that, unless otherwise specifically noted, any federal tax advice in this communication (including any attachments, enclosures, or other accompanying materials) was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penalties; furthermore, this communication was not intended or written to support the promotion or marketing of any of the transactions or matters it addresses. This email is considered a confidential communication and is intended for the person or firm identified above. If you have received this in error, please contact us at (858)576-1040 and return this to us or destroy it immediately. If you are in possession of this confidential information, and you are not the intended recipient, you are hereby notified that any unauthorized disclosure, copying, distribution or dissemination of the contents hereof is strictly prohibited. Please notify the sender of this facsimile immediately and arrange for the return or destruction of this facsimile and all attachments.

To: Larry Geraci[Larry@tfcisd.net]
From: Darryl Colton
Sent: Thur 3/16/2017 8:23:52 PM
Importance: Normal
Subject: Re: Contract Review
Received: Thur 3/16/2017 8:23:57 PM

Larry,

My apologies ahead of time as I am going to provide frank comments on the agreement so that we can finalize it and get this closed. And, so that you understand where I am coming from, just want to lay out a few of our milestones.

Throughout October we had discussions regarding the sale of my property. We met on 11/2 and agreed upon an \$800,000 purchase price, a \$50,000 non-refundable deposit, a 10% equity stake with a monthly guaranteed minimum \$10,000 payment and to definitive agreements that contained a few other conditions (e.g., I stay at the property if the CUP is issued until construction starts). We executed a good faith agreement that day stating the sale of the property was for the \$800,000 and that as a sign of good faith, you were providing a \$10,000 deposit towards the required \$50,000 non-refundable deposit. That same day you scanned and emailed to me the agreement and I replied and noted that the agreement did not contain the 10% equity stake in the dispensary. I asked you to please respond and confirm via email that a condition of the sale was my 10% equity stake. You did not respond and confirm the 10% as I requested.

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Best Regards,

Larry E. Geraci, EA

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GER0022

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Darryl Cotton <indagrodarryl@gmail.com>

Contract Review

Darryl Cotton <indagrodarryl@gmail.com>
To: Larry Geracl <Larry@tfcscd.net>

Fri, Mar 17, 2017 at 2:15 PM

Larry, I received your text asking to meet in person tomorrow. I would prefer that until we have final agreements, that we converse exclusively via email. My greatest concern is that you will get a denial on the CUP application and not provide the remaining \$40,000 non-refundable deposit. To be frank, I feel that you are not dealing with me in good faith, you told me repeatedly that you could not submit a CUP application until certain zoning issues had been resolved and that you had spent hundreds of thousands of dollars on getting them resolved. You lied to me, I found out yesterday from the City of San Diego that you submitted a CUP application on October 31, 2016 BEFORE we even signed our agreement on the 2nd of November. There is no situation where an oral agreement will convince me that you are dealing with me in good faith and will honor our agreement. We need a final written, legal, binding agreement.

Please confirm, as requested, by 12:00 PM Monday that you are honoring our agreement and will have final drafts (reflecting completely the below) by Wednesday at 12:00 PM.

It is unfortunate that matters have turned out like this, but hearing from the city that the application had been submitted before our deal was signed and that it is already under review, meaning you have been lying to me for months, forces me to take this course of action.

Again, please respond to this email so that there is a clear record of our conversations from this point forward or at least until we have final executed documents.

-Darryl

[Quoted text hidden]

To: Larry Geraci[Larry@tfcisd.net]
From: Darryl Cotton
Sent: Sun 3/19/2017 9:02:18 AM
Importance: Normal
Subject: Re: Contract Review
Received: Sun 3/19/2017 9:02:22 AM

Larry,

I understand that drafting the agreements will take time, but you don't need to consult with your attorneys to tell me whether or not you are going to honor our agreement.

I need written confirmation that you will honor our agreement so that I know that you are not just playing for time - hoping to get a response from the City before you put down in writing that you owe me the remainder of the \$50,000 nonrefundable deposit we agreed to.

If I do not have a written confirmation from you by 12:00 PM tomorrow, I will contacting the City of San Diego and let them know that our agreement was not completed and that the application pending on my property needs to be denied because the applicant has no right to my property.

On Sat, Mar 18, 2017 at 1:43 PM, Larry Geraci <Larry@tfcisd.net> wrote:

Darryl,

I have an attorney working on the situation now. I will follow up by Wednesday with the response as their timing will play a factor.

Best Regards,

Larry E. Geraci, EA

Tax & Financial Center, Inc

5402 Ruffin Rd, Ste 200

San Diego, Ca 92123

Web: Larrygeraci.com

To: Larry Geraci[Larry@tfcisd.net]
From: Darryl Cotton
Sent: Tue 3/21/2017 3:18:36 PM
Importance: Normal
Subject: Re: Contract Review
Received: Tue 3/21/2017 3:18:41 PM

Larry, I have been in communications over the last 2 days with Firouzeh, the Development Project Manager for the City of San Diego who is handling CUP applications. She made it 100% clear that there are no restrictions on my property and that there is no recommendation that a CUP application on my property be denied. In fact she told me the application had just passed the "Deemed Complete" phase and was entering the review process. She also confirmed that the application was paid for in October, before we even signed our agreement.

This is our last communication, you have failed to live up to your agreement and have continuously lied to me and kept pushing off creating final legal agreements because you wanted to push it off to get a response from the City without taking the risk of losing the non-refundable deposit in the event the CUP application is denied.

To be clear, as of now, you have no interest in my property, contingent or otherwise. I will be entering into an agreement with a third-party to sell my property and they will be taking on the potential costs associated with any litigation arising from this failed agreement with you.

Darryl Cotton

On Sun, Mar 19, 2017 at 6:47 PM, Darryl Cotton <indagroddarryl@gmail.com> wrote:

Larry,

I have not been changing my mind. The only additional requests have been in regards to putting in place third party accounting and other mechanisms to ensure that my interests are protected. I have only done so because you kept providing draft agreements that continuously failed the terms we agreed to.

It is blatantly clear to me now that you have been stringing me along, even now all your responses are to buy more time. So there is no confusion, you have until tomorrow 12:00 PM to provide confirmation as requested below. If you don't, I am emailing the City of San Diego regarding the fact that no third-party has any interest in my property and the application currently pending needs to be denied.

On Sun, Mar 19, 2017 at 3:11 PM, Larry Geraci <Larry@tfcisd.net> wrote:

Darryl,

At this point, you keep changing your mind every time we talk. My attorneys will move forward on the agreement as planned. Any signed written agreement will be followed by the letter of the law. It's not about any deposit, it's about you changing what is not in writing. So there is no confusion, the attorneys will move forward with an agreement.

As to lying about the status, read the comment below from the city on Wednesday 3/15/2017. We are addressing this currently with the city. I have been forthright with you this entire process.

To: 'Abhay Schweitzer' <abhay@techno-us.com>

GER0007

Subject: PTS 520606 - Federal Boulevard MMCC

Importance: High

Good Afternoon,

I am the Development Project Manager assigned to the above referenced project. The project is located in the CO-2-1 (Commercial Office) Zone. Please note that per the San Diego Municipal Code, a Medical Marijuana Consumer Cooperative is not a permitted use in this Zone and staff will be recommending denial of this application.

Please advise if you wish to continue the processing of the subject application through the full review process, or staff could schedule a hearing immediately with a recommendation of denial. Please note that all costs associated with the processing of the application would be charged to the deposit account and not refunded.

Please notify me at your earliest convenience of your preference.

Regards,

Best Regards,

Larry E. Geraci, EA

Tax & Financial Center, Inc

5402 Ruffin Rd, Ste 200

San Diego, Ca 92123

Web: Larrygeraci.com

Bus: 858.576.1040

Fax: 858.630.3900

Exhibit 8



Development Services Department
Land Development Review Division

May 19, 2017

SENT VIA EMAIL TO: abhay@techne-us.com

Abhay Schweitzer
Techne
3956 30th Street
San Diego, CA 92104

Subject: Federal Blvd MMCC Assessment Letter; Project No. 520606; Internal Order No. 24007070; Encanto Neighborhoods

Dear Mr. Schweitzer:

The Development Services Department has completed the initial review of the project referenced above, and described as:

- A Process Three Conditional Use Permit to demolish an existing structure and construct a new, 1,955-square-foot, building for the operation of a Medical Marijuana Consumer Cooperative (MMCC) on a site located at 6176 Federal Boulevard in the CO-2-1 Zone within the Encanto Neighborhoods Community Plan Area.

City staff has been informed that the project site has been sold. In order to continue the processing of your application, with your project resubmittal, please provide a new Grant Deed, updated Ownership Disclosure Statement, and a Change of Financial Responsible Party Form if the Financial Responsible Party has also changed.

Enclosed is a Cycle Issues Report (Enclosure 1), which contains review comments from staff representing various disciplines. The purpose of this assessment letter is to summarize the significant project issues and identify a course of action for the processing of your project.

If any additional requirements should arise during the subsequent review of your project, we will identify the issue and the reason for the additional requirement. To resolve any outstanding issues, please provide the information that is requested in the Cycle Issues Report. If you choose not to provide the requested additional information or make the requested revisions, processing may

continue. However, the project may be recommended for denial if the remaining issues cannot be satisfactorily resolved and the appropriate findings for approval cannot be made.

The Development Services Department will generally formulate a formal recommendation for your project subsequent to completion of the following milestones: 1) After the City Council recognized Community Planning Group has provided a formal project recommendation; 2) After all City staff project-review comments have been adequately addressed; and 3) During the final stages of the environmental review process.

As your Development Project Manager, I will coordinate all correspondence, emails, phone calls, and meetings directly with the applicants assigned "Point of Contact." You have been designated as the Point of Contact for this project. Please notify me should the Point of Contact change while I am managing this project.

I. REQUIRED APPROVAL/FINDINGS:

Required Approval: Your project as currently proposed requires a Process Three, Conditional Use Permit (CUP) for the proposed Medical Marijuana Consumer Cooperative pursuant to San Diego Municipal Code Section 126.0303(a). The decision to approve, conditionally approve, or deny the project will be made by the Hearing Officer with appeal rights to the Planning Commission.

Please be advised that on February 22, 2017, City Council adopted Ordinance No. O-20793 approving amendments to the Land Development Code and the Local Coastal Program, replacing the MMCC use with a new retail sales use, Marijuana Outlet. The Ordinance adopted by City Council also allows this use in the CO-2-1 Zone. Your project was deemed complete on March 13, 2017, prior to April 12, 2017, the effective date of the Ordinance. With your resubmittal, please provide written confirmation that you wish to process this application under the current regulations, and your request is for a CUP for Marijuana Outlet.

Required Findings: In order to recommend approval of your project, certain findings as outlined below must be substantiated in the record. Consider each finding as a question and provide the responses to each by answering each question specifically. Please provide your draft findings on a CD-ROM diskette in a word.docx format with your next submittal.

Conditional Use Permit – Section 126.0305

- (a) The proposed development will not adversely affect the applicable land use plan;
- (b) The proposed development will not be detrimental to the public health, safety, and welfare;

- (c) The proposed development will comply with the regulations of the Land Development Code including any allowable deviations pursuant to the Land Development Code; and
- (d) The proposed use is appropriate at the proposed location.

II. SIGNIFICANT PROJECT ISSUES: The significant project issue is summarized below. Resolution of this issue could affect your project. Additional explanation is provided in the Cycle Issues Report.

Separation Requirement – The project site is within 100 feet of residential zoned properties, the RS-1-7 Zone. Per SDMC Section 141.0504(a) (2), Marijuana Outlets shall maintain a separation of 100 feet from a residential zone. The project proposes a +10-foot public right-of-way dedication, which appears to be more than what can be accepted by the City. LDR-Engineering has indicated that staff will not support any dedication in excess of the standard requirement. Please be advised that unless it can be demonstrated that the project complies with this separation requirement, City staff must recommend denial of this application.

OPTIONS:

1. If you disagree with the staff finding above that your project site is disqualified from consideration due to its location within 100 feet of a residential zone, you may submit evidence for staff reevaluation. Please note that all staff labor hours expended to reevaluate your project application will be charged against your project's deposit account;
2. You may withdraw your application. Please note that all funds remaining in your deposit account will be refunded; or
3. You may formally request that staff continue to process your project regardless of the fact that the San Diego Municipal Code prohibits this use at this site. Continuation of the processing of your application will require further staff review and ultimately a decision pursuant to a noticed public hearing with a staff recommendation of DENIAL. Please note that all staff labor hours expended to continue the processing of your project application will be charged against your project's deposit account, and that additional funds may be necessary to continue the processing effort.

III. STUDIES/REQUIRED REPORTS: A number of documents have been identified as necessary to the project's review. Reference the attached Submittal Requirements Report (Enclosure 2).

IV. PROJECT ACCOUNT STATUS: Our current accounting system does not provide for real-time information regarding account status and majority of the recent City staff charges have not

been posted on the account; however, our latest data indicates you have approximately \$3,076.00 remaining in your deposit account.

During the processing of your project, your application's Financially Responsible Party will continue to receive monthly statements with the break-down of staff charges to your account. The minimum balance required for your application is \$5,000.00, <https://www.sandiego.gov/sites/default/files/dsdib503.pdf>. To avoid project delays due to insufficient account funds, please ensure that your deposit account maintains the minimum account balance at all times.

For your convenience, deposits can be made anytime online through Open DSD, <http://www.sandiego.gov/development-services/opensds/>, and by entering your project number in the "Project ID" field, <http://opensds.sandiego.gov/web/approvals/>. Also, any invoices can be paid online by searching for the Invoice number, <http://opensds.sandiego.gov/web/invoices/> or in person at the Cashier, located on the 3rd Floor of the Development Services Center.

- V. **TIMELINE:** Upon your review of the attached Cycle Issues Report, you may wish to schedule a meeting with staff and your consultants prior to resubmitting the project. Please contact me if you wish to schedule a meeting with staff. During the meeting, we will also focus on key milestones that must be met in order to facilitate the review of your proposal and to project a potential timeline for a hearing date. Your next review cycle should take approximately 18 business days to process.

- VI. **RESUBMITTALS/NEXT STEPS:** Resubmittals are done on a walk-in basis. Please check in on the third floor of the Development Service Center (1222 First Avenue). Please be prepared to provide the following:

A. **Plans and Reports:** Provide the number of sets of plans and reports as shown on the attached Submittal Requirements Report. The plans should be folded to an approximate 8 1/2 x 11 inch size.

B. **Response to Cycle Issues Report:** Prepare a cover letter that specifically describes how you have addressed each of the issues identified in the Cycle Issues Report and any issues identified in this cover letter, if applicable. Or, you may choose to simply submit the Cycle Issues Report, identifying within the margins how you have addressed the issue. If the issue is addressed on one or more sheets of the plans or the reports, please reference the plan, sheet number, report or page number as appropriate. If it is not feasible to address a particular issue, please indicate the reason. Include a copy of this Assessment Letter, Cycle Issues Report and your response letter if applicable, with each set of plans.

C. **California Environmental Quality Act (CEQA) Fees:**

San Diego County Clerk Fee: The San Diego County Clerk now requires \$50.00 to post the required public notice informing the public that a draft environmental document has been

prepared. A check made out to the San Diego County Clerk for this amount will be required prior to the distribution of the draft environmental document for public review.

If your project is determined to be Exempt from the provisions of the California Environmental Quality Act (CEQA); a Notice of Exemption (NOE) will be filed with the County Clerk after your project approval and all appeal periods have been exhausted. The County requires a \$50 documentary handling fee to file a CEQA NOE. Prior to scheduling your project for a decision, a check payable to the "San Diego County Clerk" in the amount of \$50 must be forwarded to my attention. Please include your project number on the check. A receipt for this fee and a copy of the NOE will be forwarded to you after the 30-day posting requirement by the County Clerk.

NOTE: New California Environmental Quality Act (CEQA) document filing fees, effective Jan. 1, 2017, can be accessed via the following link:

<https://www.wildlife.ca.gov/Conservation/CEQA/Fees>

- VII. COMMUNITY PLANNING GROUP:** Staff provides the decision maker with the recommendation from your locally recognized community planning group. If you have not already done so, please contact Kenneth Malbrough, Chairperson of the Encanto Neighborhoods Community Planning Group, at (619) 843-6721 to schedule your project for a recommendation from the group. If you have already obtained a recommendation from the community planning group, in your resubmittal, if applicable, please indicate how your project incorporates any input suggested to you by the community planning group.

Information Bulletin 620, "Coordination of Project Management with Community Planning Committees" (available at <http://www.sandiego.gov/development-services>), provides some valuable information about the advisory role the Community Planning Group. Council Policy 600-24 provides standard operating procedures and responsibilities of recognized Community Planning Committees and is available at <http://www.sandiego.gov/city-clerk/officialdocs/index.shtml>.

- VIII. STAFF REVIEW TEAM:** Should you require clarification about specific comments from the staff reviewing team, please contact me, or feel free to contact the reviewer directly. The names and telephone numbers of each reviewer can be found on the enclosed Cycle Issues Report.

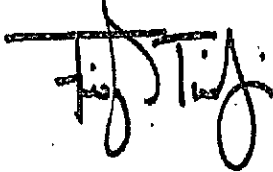
In conclusion, please note that information forms and bulletins, project submittal requirements, and the Land Development Code may be accessed on line at <http://www.sandiego.gov/development-services>. Many land use plans for the various communities throughout the City of San Diego are now available on line at <http://www.sandiego.gov/planning/community/profiles/index.shtml>.

To view project details online, visit: <http://www.sandiego.gov/development-services/opensd/>.

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Abhay Schweitzer
May 19, 2017

For modifications to the project scope, submittal requirements or questions regarding any of the above, please contact me prior to resubmittal. I may be reached by telephone at (619) 446-5325 or via e-mail at FTirandazi@sandlego.gov.

Sincerely,



Firouzeh Tirandazi
Development Project Manager

Enclosures:

1. Cycle Issues Report
2. Submittal Requirements Report

cc: File
Kenneth Malbrough, Chairperson, Encanto Neighborhoods Community Planning Group
Reviewing Staff (Assessment letter only)
Bernie Turgeon, Planning Department

Cycle Issues



THE CITY OF SAN DIEGO
Development Services Department
1222 First Avenue, San Diego, CA 92101-4154

5/19/17 5:14 pm

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L64A-003A

Project Information

Project Nbr: 520606 Title: Federal Blvd MMCC
Project Mgr: Tirandazi, Firozeh (619) 446-5325 fitrandazi@sandiego.gov



Review Information

Cycle Type: 3 Submitted (Multi-Discipline) Submitted: 03/10/2017 Deemed Complete on 03/13/2017
Reviewing Discipline: LDR-Planning Review Cycle Distributed: 03/13/2017
Reviewer: Barreras, Margaret Assigned: 03/16/2017
(619) 446-5430 Started: 04/06/2017
mbarreras@sandiego.gov Review Due: 05/17/2017
Hours of Review: 5.50 Completed: 05/15/2017 COMPLETED ON TIME
Next Review Method: Submitted (Multi-Discipline) Closed: 05/19/2017

- The review due date was changed to 05/17/2017 from 04/14/2017 per agreement with customer.
- The reviewer has indicated they want to review this project again. Reason chosen by the reviewer: First Review Issues.
- We request a 2nd complete submittal for LDR-Planning Review on this project as: Submitted (Multi-Discipline).
- The reviewer has requested more documents be submitted.
- Your project still has 41 outstanding review issues with LDR-Planning Review (all of which are new).
- Last month LDR-Planning Review performed 67 reviews, 82.6% were on-time, and 50.0% were on projects at less than < 3 complete submittals.

Project Information

Cleared?	Issue Num	Issue Text
<input type="checkbox"/>	1	The subject project is located at 6176 Federal Boulevard within the CO-2-1 Zone in the Encanto Neighborhood: Southeastern Community Plan area. The .14 acre site is legally described as Track #2001100, BLK 25, Lot 20 Per Map 2121. Existing on site is a one-story commercial office building. [Information Item - No Response Required] (New Issue)
<input type="checkbox"/>	2	The project is an application for a Conditional Use Permit to establish a Medical Marijuana Consumer Cooperative dispensary within a newly constructed 1955 square-foot commercial building with the proposed demolition of an existing one-story 2086.0 square-foot commercial building on the premises. [Information Item - No Response Required] (New Issue)
<input type="checkbox"/>	3	The existing structure was built in 1951 and therefore has been submitted to and is undergoing a Plan Historic review to determine potential/historic significance. (Info Only, No Response Required). Purview Plan Historic; please refer to this discipline review for more information. (New Issue)
<input type="checkbox"/>	4	The premises is identified within the Commercial Office zone. The purpose and intent of development within this zone is to provide employment uses with limited, complementary retail uses. The zone is intended to apply in large-scale activity centers or in specialized areas where a full range of commercial activities is not desirable. Specifically, the CO-2-1 is intended to accommodate office uses with a neighborhood scale and orientation. Residential development within this zone is prohibited. (New Issue)
<input type="checkbox"/>	5	The land use plan within the Encanto Community Plan, Figure 2-1, identifies Community Commercial-Residential Prohibited land use which is consistent with the City-Wide base zone regulating the premises. (New Issue)
<input type="checkbox"/>	6	Planning determines that the project is not located within 1000 linear feet of a Resource or Population-based park typically located within close proximity to residential areas intended to serve the daily recreational and leisure needs of neighborhoods and communities. Utilizing the graphic scale found on Figure 7-1 of the Encanto Community Plan (ECP), staff verifies that a distance between the Emerald Hills Neighborhood Park to Federal Blvd MMCC is greater than 1500 linear feet measured between property lines. Reference Separately Regulated Uses, SDMC Section 141.0504(a). (New Issue)

Permits

Cleared?	Issue Num	Issue Text
<input type="checkbox"/>	7	Medical Marijuana Consumer Cooperatives may be permitted with a Conditional Use Permit decided in accordance with Process Three. [Information Item - No Response Required] (New Issue)
<input type="checkbox"/>	8	A decision on an application for a Conditional Use Permit for the uses listed in Section 126.0303(a) shall be made in accordance with Process Three with the Hearing Officer as the decision maker. The Hearing Officer's decision may be appealed to the Planning Commission in accordance with SDMC 112.0506. [Information Item - No Response Required] (New Issue)

For questions regarding the LDR-Planning Review, please call Margaret Barreras at (619) 446-5430. Project Nbr: 520606 / Cycle: 3



Cycle Issues



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<u>Issue</u>		
<u>Cleared?</u>	<u>Num</u>	<u>Issue Text</u>
<input type="checkbox"/>	9	CUP Findings: Reference SDMC §126.0305 (a) through (d). An application for a Conditional Use Permit may be approved or conditionally approved only if the decision maker makes the findings for this permit. At the next submittal, provide project support by addressing how the Federal Blvd MMCC makes each CUP finding. (New Issue)

MMCC Review

<u>Issue</u>		
<u>Cleared?</u>	<u>Num</u>	<u>Issue Text</u>
<input type="checkbox"/>	10	In accordance with MMCC requirements, the CO-2-1 zone meets the restriction requirement for zones permitted to operate a Medical Marijuana Consumer Cooperative. The effective date for MM Outlets within the CO-2-1 zone with a CUP decided in accordance with Process Three was April 13, 2017 by Ordinance-2017-93. (Information Item - No Response Required) (New Issue)
<input type="checkbox"/>	11	The applicant has provided the required "Affidavit for Medical Marijuana Consumer Cooperatives for CUP." (Information Item - No Response Required) (New Issue)
<input type="checkbox"/>	12	Provide a 1000 foot radius map spreadsheet for those businesses within 1000 linear feet of Federal Blvd MMCC to verify prohibited uses as specified within SDMC 141.0504. (New Issue)
<input type="checkbox"/>	13	The subject site is within the boundaries of City Council District 4. Only four Medical Marijuana Consumer Cooperatives are permitted per City Council District. Currently, there are no approved MMCC's within Council District 4. With no approved MMCCs in the vicinity, the 1000 linear feet prohibition is currently not an issue. (Information Item - No Response Required) (New Issue)
<input type="checkbox"/>	14	Residential Zone: Federal Blvd is the PROW between the subject site and the residential zone RS-1-7. Federal Blvd is not considered a barrier impeding direct physical access between MMCC and residential zone. The applicant submits Sheet A103, a Site Plan showing a proposed "Irrevocable Offer of Dedication" which Planning determines may satisfy the code requirement for a separation of 100' if supported by LDR Engineering. Without the 10' or greater dedication, Planning will not support this project. (Continued) (New Issue)
<input type="checkbox"/>	15	Major Issue: LDR Engineering requires a ROW dedication to create a 10 ft curb to PL distance. Additional dedication by Transportation may also be requested but has not yet been determined. In accordance with Section 113.0225(a)(2) a 100 ft separation distance from the RS-1-7 zone to the pre-dedication PL for Federal MMCC does not exist. Also, a ROW dedication > than the 10' C to PL reqmt is shown (Ref: A102). Planning defers to Engineering & Transportation for dedication requirements after which the separation distance can be determined. (New Issue)
<input type="checkbox"/>	16	MMCC Conditions: The architect has incorporated SDMC Conditions. The following conditions are also taken from SDMC, however, Planning could not locate on the Exhibit (include): (j) Deliveries shall be permitted as an accessory use only from marijuana outlets with a valid Conditional Use Permit unless otherwise allowed pursuant to the Compassionate Use Act of 1996. (New Issue)
<input type="checkbox"/>	17	(k) The marijuana outlet, adjacent public sidewalks, and areas under the control of the marijuana outlet, shall be maintained free of litter and graffiti at all times. (New Issue)
<input type="checkbox"/>	18	(l) The marijuana outlet shall provide daily removal of trash, litter, and debris. Graffiti shall be removed from the premises within 24 hours. (New Issue)
<input type="checkbox"/>	19	(m) Consultations by medical professionals shall not be a permitted accessory use at a marijuana outlet. (New Issue)
<input type="checkbox"/>	20	Additional Planning Commission Conditions for Incorporation Into Permit: The following are optional security conditions in accordance with requirements of Planning Commission. Please advise Planning should you object to any of these conditions. (New Issue)
<input type="checkbox"/>	21	Security shall include operable cameras and a metal detector to the satisfaction of Development Services Department. This facility shall also include alarms and two armed security guards to the extent the possession of a firearm is not in conflict with 18 U.S.C. § 922(g) and 27 C.F.R § 478.11. Nothing herein shall be interpreted to require or allow a violation of federal firearms laws. The security guards shall be licensed by the State of California. (Continued) (New Issue)
<input type="checkbox"/>	22	One security guard must be on the premises 24 hours a day, seven days a week, the other must be present during business hours. The security guards should only be engaged in activities related to providing security for the facility, except on an incidental basis. The cameras shall have and use a recording device that maintains the records for a minimum of 30 days. (New Issue)
<input type="checkbox"/>	23	The Owner/Permittee shall install bullet resistant glass, plastic, or laminate shield at the reception area to protect employees. (New Issue)
<input type="checkbox"/>	24	The Owner/Permittee shall install bullet resistant armor panels or solid grouted masonry block walls, designed by a licensed professional, in common areas with other tenants, reception area, and vault room. (New Issue)
<input type="checkbox"/>	25	Other Correction: See G002 and revise Issue 14 zone from IS-1-1 to CO-2-1. (New Issue)

CO-2-1 Dev Reg Review

<u>Issue</u>		
<u>Cleared?</u>	<u>Num</u>	<u>Issue Text</u>

For questions regarding the LDR Planning Review review, please call: Margarita Barreras at (619) 446-5430 or Project Number 520606 / Cycle 30



p2k v 02.03.38

Flrouzeh Tirandazi 446-5325

Cycle Issues



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<u>Cleared?</u>	<u>Issue Num</u>	<u>Issue Text</u>
<input type="checkbox"/>	26	Reference Table 131-05D Development Regulation Review for the CO Zones Front Setback: 10' Minimum with a 25' Maximum Front Setback. Two code sections apply which are provided as: 1. [See Section 131.0543(e)]; 2. Footnote 2: See section 131.0543(s)(2). The front setback is incorrectly applied. See Diagram 131-05B which illustrates how this code section shall be applied. Revise your design to demonstrate the maximum setback applied to 70 percent of the street frontage with the remaining 30 percent not required to observe the maximum setback (New Issue)
<input type="checkbox"/>	27	Required Side Yard: To be reviewed following the revision of the project required by Issue above (#26). Shown correctly under Zoning Information. (New Issue)
<input type="checkbox"/>	28	Rear Yard Setback: To be reviewed following the revision of the project required by Issue above (#26). Shown correctly under Zoning Information, Sheet G001. (New Issue)
<input type="checkbox"/>	29	Structure Height: 45'. Proposal: 13'. No Issues. (New Issue)
<input type="checkbox"/>	30	Coverage: N/A. (New Issue)
<input type="checkbox"/>	31	F.A.R.: .75. Incorrectly provided at .80. Make all necessary calculation changes and apply as necessary. (New Issue)
<input type="checkbox"/>	32	Ground Floor Height: Applies. Reference SDMC 131.0548 and demonstrate compliance on elevations per code and cite this code section. (New Issue)
<input type="checkbox"/>	33	Building Articulation: Applies. Planning unable to verify compliance, Reference SDMC 131.0554. Clarify conformance with notes on plans or revise to demonstrate conformance. (New Issue)
<input type="checkbox"/>	34	Street Yard Restriction: N/A. (New Issue)
<input type="checkbox"/>	35	Refuse and Recyclable Storage: Demonstrated on Sheet A102. The location of refuse/recyclables may change with revisions to the location of the structural footprint as requested under Issue #26. (New Issue)
<input type="checkbox"/>	36	Transparency: Applies. See Section 131.0552 and demonstrate compliance. (New Issue)
<input type="checkbox"/>	37	Loading Dock and Overhead Door Screening Regulations: Applies. See Section 142.1030 and apply after revisions to structural footprint have been performed. (New Issue)

General Plan and Community Pla

<u>Cleared?</u>	<u>Issue Num</u>	<u>Issue Text</u>
<input type="checkbox"/>	38	Policy guidance is provided by the GP and CP for commercial uses. Please consider the following elements in your next submittal: 1. Development of new Infill buildings should take into account green building practices and sustainability; 2. Designing for defensible space; 3. Incorporate Urban Design policy as it relates to character and identity of the existing urban form, including public spaces and village design, neighborhood and community gateways and linkages, building types and massing, streetscape and pedestrian orientation, and other unique aspects of the Encanto community. (New Issue)
<input type="checkbox"/>	39	Staff defers review of land use based upon incomplete information provided within this first review. (New Issue)

Signs

<u>Cleared?</u>	<u>Issue Num</u>	<u>Issue Text</u>
<input type="checkbox"/>	40	See SDMC 141.0614 MMCC signage requirements under permit Conditions. [Information Item - No Response Required] (New Issue)
<input type="checkbox"/>	41	Signage shall be in conformance with Land Development Code Chapter 12, Article 9, Division 8 (Sign Permit Procedures) and Chapter 14, Article 2, Division 12 (Sign Regulations). [Information Item - No Response Required] (New Issue)

Cycle Issues



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Review Information

Cycle Type: 3 Submitted (Multi-Discipline)
Submitted: 03/10/2017 **Deemed Complete on** 03/13/2017
Reviewing Discipline: LDR-Environmental
Cycle Distributed: 03/13/2017
Reviewer: Mc Pherson, Anna
Assigned: 03/14/2017
(619) 446-5276
Started: 04/07/2017
amcpherson@sanidago.gov
Review Due: 04/14/2017
Hours of Review: 1.00
Completed: 04/14/2017 **COMPLETED ON TIME**
Next Review Method: Submitted (Multi-Discipline)
Closed: 05/19/2017

- The reviewer has indicated they want to review this project again. Reason chosen by the reviewer: First Review Issues.
- We request a 2nd complete submittal for LDR-Environmental on this project as: Submitted (Multi-Discipline).
- The reviewer has requested more documents be submitted.
- Your project still has 9 outstanding review issues with LDR-Environmental (all of which are new).
- Last month LDR-Environmental performed 100 reviews, 90.0% were on-time, and 44.3% were on projects at less than < 3 complete submittals.

Project Scope

Cleared?	Issue Num	Issue Text
<input type="checkbox"/>	1	The proposed project is a Conditional Use Permit (CUP) for a Medical Marijuana Consumer Cooperative (MMCC) at 6176 Federal Boulevard. The applicant is proposing to demolish the existing approximately 2,087 square foot building and construct and operate a proposed MMCC within a new 1,955 square-foot building on a 6,049 square-foot lot. The project is designated for commercial office uses in the Encanto Community Plan. It is zoned CO-2-1. (New issue)

Project Issues

Engineering

Cleared?	Issue Num	Issue Text
<input type="checkbox"/>	2	LDR- Engineering has requested delineation of the pedestrian access to the front entrance and is requiring the project to replace the driveway consistent with City standards. The project will also require a Preliminary Drainage Study and a Water Quality Study. (New issue)

GHG

Cleared?	Issue Num	Issue Text
<input type="checkbox"/>	3	EAS received a CAP Consistency Checklist for the project. It is filled out incorrectly. All questions must be answered Yes or N/A with an explanation provided regarding why a measure is non applicable. Also, the CAP Checklist was updated as of February 2017. Please submit a revised checklist with the next cycle. If you have questions or require assistance completing the checklist, please contact Anna McPherson at 619-446-5276. (New Issue)

Cultural Resources

Cleared?	Issue Num	Issue Text
<input type="checkbox"/>	4	Plan-Historic has requested additional information to assist in a determination regarding the potential for the existing structure to be a historic resource. EAS will coordinate with staff upon receipt of this information. (New Issue)

Geology

Cleared?	Issue Num	Issue Text
<input type="checkbox"/>	5	Geology staff has requested submittal of a Geotechnical Report with the next review cycle. (New issue)

Paleontological Resources

Cleared?	Issue Num	Issue Text
<input type="checkbox"/>	6	Please clarify the total amount of excavation for the entire project including the maximum depth of cut on the Grading Plan. If no grading is proposed, please state so. Until this information is clarified on the grading plan, EAS cannot address paleontological resources. (New Issue)

LDR-Planning

Cleared?	Issue Num	Issue Text
<input type="checkbox"/>	7	EAS will coordinate with LDR-Planning regarding MMCC Ordinance issues and project community plan consistency. (New Issue)

For questions regarding the LDR-Environmental review, please call Anna McPherson at (619) 446-5276. Project Nbr: 520606 / Cycle: 3

Cycle Issues



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LDR- Landscape

<u>Cleared?</u>	<u>Issue Num</u>	<u>Issue Text</u>
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<input type="checkbox"/>	8	Landscape staff has requested additional information regarding amount and type of landscaping. (New Issue)
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Determination

<u>Cleared?</u>	<u>Issue Num</u>	<u>Issue Text</u>
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<input type="checkbox"/>	9	All disciplines have also requested plan revisions. Until all requested information is submitted and all issues are cleared, EAS is unable to make an environmental determination. Please be aware that the environmental review may change in response to any project changes and/or new information. Additionally, the new information may lead to the requirement of new and/or additional technical studies. (New Issue)
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Cycle Issues



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Review Information

Cycle Type: 3 Submitted (Multi-Discipline)
Submitted: 03/10/2017 **Deemed Complete on** 03/13/2017
Reviewing Discipline: LDR-Engineering Review
Cycle Distributed: 03/13/2017
Reviewer: Tamares, Jeff
Assigned: 03/13/2017
(619) 446-5119
Started: 04/05/2017
jtamares@sandiego.gov
Review Due: 05/17/2017
Hours of Review: 6.00
Completed: 05/15/2017 **COMPLETED ON TIME**
Next Review Method: Submitted (Multi-Discipline)
Closed: 05/19/2017

- The review due date was changed to 05/17/2017 from 04/14/2017 per agreement with customer.
- The reviewer has indicated they want to review this project again. Reason chosen by the reviewer: First Review Issues.
- We request a 2nd complete submittal for LDR-Engineering Review on this project as: Submitted (Multi-Discipline).
- The reviewer has requested more documents be submitted.
- Your project still has 24 outstanding review issues with LDR-Engineering Review (all of which are new).
- Last month LDR-Engineering Review performed 80 reviews, 93.8% were on-time, and 42.1% were on projects at less than < 3 complete submittals.

1st Review

Cleared?	Issue Num	Issue Text
<input type="checkbox"/>	1	The Engineering Review Section has reviewed the subject development and have the following comments that need to be addressed prior to a Public Hearing. Upon resubmittal, we will complete our review of the Conditional Use Permit. (New Issue)
<input type="checkbox"/>	2	The San Diego Water Board adopted Order No. R9-2013-0001, NPDES No. CAS0109266, National Pollutant Discharge Elimination System (NPDES) Permit and Waste Discharge Requirements for Discharges from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds within the San Diego Region. This project will be required to adhere to the City of San Diego Storm Water Standards in effect at the time of approval of ministerial permit. The current Storm Water Development Regulations became effective on February 16, 2016 and this project will be subject to those regulations.
<input type="checkbox"/>	3	(New Issue) Revise the Site Plan. Show the existing and proposed grading contours and spot elevations. Add a Grading Data Table with cut/fill and import/export quantities, plus the depths of cut and fill. If the quantity is ZERO, add that value to the required Data Table. Add surface drainage flow patterns and slope gradient, and the collection and discharge points for all site and roof drains.
<input type="checkbox"/>	4	(New Issue) Revise the Site Plan Sheet A102. Add the source, date and MSL datum of the required topography.
<input type="checkbox"/>	5	(New Issue) Revise the Site Plan Sheet A102 and Topographic Survey sheet 1. Add a Bench Mark per the City of San Diego Vertical Control Book. include the elevation and required MSL Datum.
<input type="checkbox"/>	6	(New Issue) On the plan view of the Site Plan Sheet A102 and Topographic Survey sheet 1, please call out the onsite legal description and the legal descriptions of all adjacent properties.
<input type="checkbox"/>	7	(New Issue) Show the public right-of-way for all existing streets adjacent the project and the street names. Show full limits including both sides of the street and include right-of-way widths. Show all proposed or existing improvements including curb and gutter, sidewalks, street lights, utilities, medians, centerline of right-of-way, and all driveways within the property boundary. Please label and/or include in legend.
<input type="checkbox"/>	8	(New Issue) Please revise the Site Plan, sheet A102, to show the curb to property line, curb to centerline, property line to property line distances, and width of sidewalk for Federal Blvd.
<input type="checkbox"/>	9	(New Issue) Show existing and proposed finished pad and floor elevations on the site plan A102. (New Issue)

For questions regarding the LDR-Engineering Review, review, please call Jeff Tamares at (619) 446-5119. Project Nbr: 520606 / Cycle: 05

Cycle Issues



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<u>Cleared?</u>	<u>Issue Num</u>	<u>Issue Text</u>
<input type="checkbox"/>	10	The current layout shows drainage lines confluence to the middle of the parking area. Please revise the site plan sheet A102 to show how the runoff is collected, conveyed and discharged offsite. Identify public and private systems and show the point of connection to any system, public or private.
		(New Issue)
<input type="checkbox"/>	11	Submit a Preliminary Drainage Study which addresses the existing and proposed storm water run-off and discharge locations for the project site.
		(New Issue)
<input type="checkbox"/>	12	The applicant did not submit the current Storm Water Requirements Applicability Checklist dated October 2016. Submit a revised checklist on the next submittal.
		(New Issue)
<input type="checkbox"/>	13	The project is a Standard Development Project subject to Site Design and Source Control BMPs. Submit a Water Quality Study that identifies Pollutants from the Project Area and addresses how the 8 possible Low Impact Development (LID) BMPs and 6 possible Source Control BMPs have been incorporated into the project.
		(New Issue)
<input type="checkbox"/>	14	If any of the 14 possible BMPs have not been used in the project design, add a discussion in the report why the omitted BMPs are not feasible or not applicable. Please Note: A Water Quality Study is required, not a SWQMP. For an example of a Water Quality Study - 2016, contact my office at jtamares@sandiego.gov
		(New Issue)
<input type="checkbox"/>	15	City's Storm Water Standards are available online at: https://www.sandiego.gov/stormwater/regulations
		(New Issue)
<input type="checkbox"/>	16	Revise the site plans to show the dedication necessary to create a 10 foot curb to property line distance on Federal Boulevard. Engineering Review will not support additional right of way dedication that is more than City standard requires. Transportation Development will determine if additional right of way is required. (New Issue)
<input type="checkbox"/>	17	Revise the Site Plan A102. If the existing water service and sewer lateral will be used, add a note that states: The existing water and sewer services will remain. If new services are required: Show the Water and Sewer Mains, including the new laterals that serve the project. Call out the City Improvement Plan numbers. A search of City Records by your office may be required.
		(New Issue)
<input type="checkbox"/>	18	Please show the pedestrian path of travel from the public sidewalk to the project entrance.
		(New Issue)
<input type="checkbox"/>	19	Revise the Site Plan A102 to call out the new 24' wide driveway will be constructed to current City standards. Please show the sidewalk transitions per SDG-159.
		(New Issue)
<input type="checkbox"/>	20	Revise the Site Plan A102 to show new City standard curb, gutter, and sidewalk where the existing driveway is located.
		(New Issue)
<input type="checkbox"/>	21	Add the visibility area triangles, per San Diego Municipal Code Diagram 113-02SS, at the driveway on Federal Blvd. For the driveway, show the visibility areas on private property which shall extend 10 feet inward along the driveway end and along the property line. Add a note that states: No obstruction including solid walls in the visibility area shall exceed 3 feet in height. Plant material, other than trees, within the public right-of-way that is located within visibility areas shall not exceed 24 inches in height, measured from the top of the adjacent curb.
		(New Issue)
<input type="checkbox"/>	22	Revise the Site Plan Sheet A1. Add a note that states: Prior to the issuance of any construction permit, the Owner/Permittee shall incorporate any construction Best Management Practices necessary to comply with Chapter 14, Article 2, Division 1 (Grading Regulations) of the San Diego Municipal Code, into the construction plans or specifications.
		(New Issue)
<input type="checkbox"/>	23	Revise the cover sheet G001. In lieu of the Storm water notes for construction BMPs, Add a note that states: Prior to the issuance of any construction permit the Owner/Permittee shall submit a Water Pollution Control Plan (WPCP). The WPCP shall be prepared in accordance with the guidelines in Part 2 Construction BMP Standards Chapter 4 of the City's Storm Water Standards.
		(New Issue)



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<u>Cleared?</u>	<u>Issue Num</u>	<u>Issue Text</u>
<input type="checkbox"/>	24	Additional comments may be recommended pending further review of any redesign of this project. These comments are not exclusive. Should you have any questions or comments, please call Jeff Tamares at 619 446-5119.

(New Issue)

Cycle Issues



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Review Information

Cycle Type: 3 Submitted (Multi-Discipline)	Submitted: 03/10/2017	Deemed Complete on: 03/13/2017
Reviewing Discipline: LDR-Transportation Dev	Cycle Distributed: 03/13/2017	
Reviewer: Khaligh, Kamran (619) 446-5357 khalighK@sandiego.gov	Assigned: 03/14/2017	
	Started: 04/11/2017	
Hours of Review: 5.00	Review Due: 04/11/2017	
Next Review Method: Submitted (Multi-Discipline)	Completed: 04/11/2017	COMPLETED ON TIME
	Closed: 05/19/2017	

- The review due date was changed to 05/17/2017 from 04/14/2017 per agreement with customer.
- The reviewer has indicated they want to review this project again. Reason chosen by the reviewer: First Review Issues.
- We request a 2nd complete submittal for LDR-Transportation Dev on this project as: Submitted (Multi-Discipline).
- The reviewer has requested more documents be submitted.
- Your project still has 5 outstanding review issues with LDR-Transportation Dev (all of which are new).
- Last month LDR-Transportation Dev performed 47 reviews, 91.5% were on-time, and 39.0% were on projects at less than < 3 complete submittals.

4/17 Review:

Cleared?	Issue Num	Issue Text
<input type="checkbox"/>	1	PROJECT-The proposed project is a Conditional Use Permit (CUP) for a Medical Marijuana Consumer Cooperative (MMCC) at 6176 Federal Boulevard. Applicant is proposing to demolish the existing approximately 2,087 sq. ft. building and operate the proposed MMCC within a new 1,955 sq. ft. building on a 6,049 sq. ft. lot in CO-2-1 zone within Encanto Community Plan Area based on the submitted plans. (New issue)
<input type="checkbox"/>	2	TRIP GENERATION-The proposed 1,955 sq. ft. MMCC is expected to generate approximately 78 average weekday trips (ADT), with 2 AM peak hour trips and 7 PM peak hour trips based on the rate of 40 ADT/1000 sq. ft. A transportation impact analysis is not required. To estimate the existing trips to this site, please identify all the existing uses, their size, and occupancy on the plans. (New issue)
<input type="checkbox"/>	3	PARKING EXEMPTION ON LOTS LESS THAN 10,000 SQ. FT.-Section 142.0540(a) and Table 142-05H of SDMC allow exemptions to the parking regulations for commercial uses on lots less than 10,000 sq. ft. in size that existed prior to January 1, 2000. This section has two provisions for small lots with and without alley access. Such lots without alley access would not have any parking requirements. Accordingly, based on current regulations, there is no parking requirement for commercial uses on the 7,361 sq. ft. lot. (New issue)
<input type="checkbox"/>	4	PLANS/PARKING- The minimum parking stall dimensions and aisle width should comply with the SDMC section 142.0560. Parking aisles that do not provide through circulation shall provide a turnaround area at the end of the aisle that is clearly marked to prohibit parking and that has a minimum area equivalent to a parking space per SDMC 142.0560(d)(3). Please revise plans to provide and call out this requirement. (New issue)
<input type="checkbox"/>	5	FRONTAGE-Plans should show and dimension the existing versus the proposed property lines to curb lines distances, sidewalk and its width on the fronting street. A typical street cross-section drawing with dimensions should also be included on the plans. (New issue)

For questions regarding the LDR-Transportation Dev review, please call Kamran Khaligh at (619) 446-5357. Project Nbr: 5206067, Cycle: 8

Cycle Issues



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Review Information

Cycle Type: 3 Submitted (Multi-Discipline)	Submitted: 03/10/2017	Deemed Complete on 03/13/2017
Reviewing Discipline: Community Planning Group	Cycle Distributed: 03/13/2017	
Reviewer: Tirandazi, Frouzeh (619) 446-5325 ftirandazi@sandiego.gov	Assigned: 04/19/2017	
	Started: 04/19/2017	
Hours of Review: 0.20	Review Due: 04/11/2017	
Next Review Method: Submitted (Multi-Discipline)	Completed: 04/19/2017	COMPLETED LATE
	Closed: 05/19/2017	

- The review due date was changed to 05/17/2017 from 04/14/2017 per agreement with customer.
- The reviewer has indicated they want to review this project again. Reason chosen by the reviewer: First Review Issues.
- We request a 2nd complete submittal for Community Planning Group on this project as: Submitted (Multi-Discipline).
- The reviewer has requested more documents be submitted.
- Your project still has 2 outstanding review issues with Community Planning Group (all of which are new).
- Last month Community Planning Group performed 55 reviews, 45.5% were on-time, and 45.5% were on projects at less than < 3 complete submittals.

1st Review

		Issue
Cleared?	Num	Issue Text
<input type="checkbox"/>	1	Please contact the Chair for the Encanto Neighborhoods Community Planning Group, (as identified in the assessment letter) to make arrangements to present your project for review at their next available meeting. This Community Planning Group is officially recognized by the City as a representative of the community, and an advisor to the City in actions that would affect the community. The Development Services Department has notified the group of your request and has sent them a copy of your project plans and documents. (New Issue)

Encanto

		Issue
Cleared?	Num	Issue Text
<input type="checkbox"/>	2	Please contact the Chair for the Encanto Neighborhoods Community Planning Group, (as identified in the assessment letter) to make arrangements to present your project for review at their next available meeting. This Community Planning Group is officially recognized by the City as a representative of the community, and an advisor to the City in actions that would affect the community. The Development Services Department has notified the group of your request and has sent them a copy of your project plans and documents. (New Issue)

Cycle Issues



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Review Information

Cycle Type: 3 Submitted (Multi-Discipline)	Submitted: 03/10/2017	Deemed Complete on 03/13/2017
Reviewing Discipline: BDR-Structural	Cycle Distributed: 03/13/2017	
Reviewer: Shadyab, Mehdi (619) 446-5067 mshadyab@sandiego.gov	Assigned: 03/22/2017	
	Started: 03/30/2017	
Hours of Review: 2.00	Review Due: 04/11/2017	
Next Review Method: Submitted (Multi-Discipline)	Completed: 03/30/2017	COMPLETED ON TIME
	Closed: 05/19/2017	

- The review due date was changed to 05/17/2017 from 04/14/2017 per agreement with customer.
- We request a 2nd complete submittal for BDR-Structural on this project as: Submitted (Multi-Discipline).
- The reviewer has requested more documents be submitted.
- Your project still has 12 outstanding review issues with BDR-Structural (all of which are new).
- Last month BDR-Structural performed 1251 reviews, 93.4% were on-time, and 85.6% were on projects at less than < 3 complete submittals.

Preliminary Review Comments

Cleared?	Issue Num	Issue Text
<input type="checkbox"/>	1	City of San Diego Building Code: Construction permit applications submitted and Deemed Complete on or after January 1, 2017 are required to comply with the new 2016 edition of State of California building codes, as well as adopted local amendments published in the San Diego Municipal Code. (New Issue)
<input type="checkbox"/>	2	Info Bulletin 513: Preliminary Review is not a comprehensive plan review, nor is it intended to replace the services provided by design professionals (architects, engineers, land use attorneys, code consultants, etc.). Through preliminary review, you can obtain general information on the regulations with which your project must comply and obtain interpretations on how the City will apply code provisions to specific situations. For detailed information please refer to information Bulletin 513. (New Issue)
<input type="checkbox"/>	3	The following comments are only a partial list of issues discovered as a result of this discretionary review and responses to the specific questions asked. They are NOT to be construed as a complete list of corrections or a complete list of issues. Plans for recheck and responses to issues under this preliminary review need not be submitted and recheck will not be performed. (New Issue)
<input type="checkbox"/>	4	Sheet G001: Project Information: Proposed occupancy classification specified as "B" is not correct. The display, sale, and stock of marijuana, a merchandise, is classified as M-occupancy. Please see Section 309. The aggregate areas of "Storage" and "Processing" is greater than 10% x 1955 = 195.5 sq ft. Therefore not considered as incidental Uses as per CBC, Sec. 509. These spaces shall be classified as S-occupancy. Aggregate Office + Safe floor areas is less than 195.5 sq ft. therefore incidental use. This building shall be analyzed as a M/S mixed occupancy classification. Revise plan. (New Issue)
<input type="checkbox"/>	5	Site Accessibility: The accessible parking space shall be van-accessible complying with Sec. 11B-208.2.4. (New Issue)
<input type="checkbox"/>	6	Site Accessibility: Site arrival point: An accessible route from public street and side walk to the primary entry of the facility shall be provided. CBC, Section 11B-206. Plan as shown does not provide this required accessible route and therefore is not code compliant. Revise plan. (New Issue)
<input type="checkbox"/>	7	Site Accessibility: Show width, running slope, cross-slope, and surface finish of accessible routes on plan complying with applicable provisions of Sec. 11B-Division 4. Plans as shown do not specify these required information. (New Issue)
<input type="checkbox"/>	8	EV-Charging Stations: Construction shall comply with Section 5.106.5.3.1 or Section 5.106.5.3.2 of the 2016 California Green Building Standards Code (CGBSC) to facilitate future installation of Electric Vehicle Supply Equipment (EVSE). When EVSE(s) is/are installed, it shall be in accordance with the governing California Building Code, and the California Electrical Code as specified in Section 5.106.5.3 of Chapter 5 of the CGBSC [Nonresidential Mandatory Measures]. This information must be shown and identified on plans. (New Issue)
<input type="checkbox"/>	9	Accessible EVCS: Provide one van-accessible parking space with loading/unloading access aisle for EVCS. Please see Section 11B-228.3 and 11B-812. Note that, this van-accessible EVCS is required in addition to the required van-accessible parking space. Show this required accessible EVCS parking space with its access aisle and other associated specifications on plans. (New Issue)
<input type="checkbox"/>	10	Site Accessibility: Sheet A102: Show detectable warning along the entire length of the 'Entry Walkway' complying with Section 11B-247.1.2.5. The "Entry Walkway" adjoins the parking vehicular way. (New Issue)
<input type="checkbox"/>	11	Parapets: Sheet A201: Provide 30 inches high parapets on the exterior walls of the building located on or adjacent to property lines on three-sides complying with the applicable provisions of Sec. 705.11. Plan as shown is not code compliant. Revise plan. (New Issue)
<input type="checkbox"/>	12	/// End of Preliminary Review Comments. (New Issue)

For questions regarding the BDR-Structural review, please call Mehdi Shadyab at (619) 446-5067. Project Nbr. 520606/Cycle:3



p2k v 02.03.38

Frouzeh Tirandazi 446-5325

Cycle Issues



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Review Information

Cycle Type: 3 Submitted (Multi-Discipline)	Submitted: 03/10/2017	Deemed Complete on: 03/13/2017
Reviewing Discipline: Fire-Plan Review	Cycle Distributed: 03/13/2017	
Reviewer: Sylvester, Brenda (619) 446-5449 bsylvester@sandiego.gov	Assigned: 03/16/2017	
	Started: 04/13/2017	
Hours of Review: 0.50	Review Due: 04/11/2017	
Next Review Method: Submitted (Multi-Discipline)	Completed: 04/13/2017	COMPLETED LATE
	Closed: 05/19/2017	

- The review due date was changed to 05/17/2017 from 04/14/2017 per agreement with customer.
- We request a 2nd complete submittal for Fire-Plan Review on this project as: Submitted (Multi-Discipline).
- The reviewer has requested more documents be submitted.
- Last month Fire-Plan Review performed 25 reviews, 40.0% were on-time, and 77.3% were on projects at less than < 3 complete submittals.

Fire Department Issues

	<u>Issue</u>
<u>Cleared?</u>	<u>Num</u> <u>Issue Text</u>
<input checked="" type="checkbox"/>	1 No corrections or issues based on this submittal. (New Issue)



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Review Information

Cycle Type: 3 Submitted (Multi-Discipline) **Submitted:** 03/10/2017 **Deemed Complete on** 03/13/2017
Reviewing Discipline: LDR-Geology **Cycle Distributed:** 03/13/2017
Reviewer: Mills, Kreg **Assigned:** 03/15/2017
(619) 446-5295 **Started:** 04/06/2017
K Mills@sandiego.gov **Review Due:** 04/11/2017
Hours of Review: 2.00 **Completed:** 04/06/2017 **COMPLETED ON TIME**
Next Review Method: Submitted (Multi-Discipline) **Closed:** 05/19/2017

- The review due date was changed to 05/17/2017 from 04/14/2017 per agreement with customer.
- The reviewer has indicated they want to review this project again. Reason chosen by the reviewer: First Review issues.
- We request a 2nd complete submittal for LDR-Geology on this project as: Submitted (Multi-Discipline).
- The reviewer has requested more documents be submitted.
- Your project still has 7 outstanding review issues with LDR-Geology (all of which are new).
- Last month LDR-Geology performed 87 reviews, 82.8% were on-time, and 77.0% were on projects at less than < 3 complete submittals.

520606-3 (4/6/2017)

REFERENCES:

Cleared?	Issue Num	Issue Text
<input type="checkbox"/>	1	Development Plans, 6176 Federal Boulevard, San Diego, California 92114, prepared by Techné, dated February 22, 2017 (their project no. 1626); Topographic Survey prepared by Lundstrom Engineering and Surveying, Inc., dated October 18, 2016 (their file no. L222-02)

(New Issue)

COMMENTS:

Cleared?	Issue Num	Issue Text
<input type="checkbox"/>	2	The project site is located in geologic hazard category (GHC) 32 as shown on the City's Seismic Safety Study Geologic Hazard Maps. GHC 32 is characterized by a potential for liquefaction and ground failure. Submit a geotechnical investigation report that addresses liquefaction potential of the site and potential consequences of soil liquefaction on the proposed project. For information regarding geotechnical reports, consider reviewing the City's Guidelines for Geotechnical Reports (https://www.sandiego.gov/sites/default/files/legacy/development-services/pdf/industry/geoguidelines.pdf).
<input type="checkbox"/>	3	The geotechnical investigation report must contain a site-specific geologic/geotechnical map that shows the distribution of fill and geologic units, location of exploratory excavations, location of cross-sections, and proposed construction. Circumscribe the limits of anticipated remedial grading on the geologic/geotechnical map to delineate the proposed footprint of the project.
<input type="checkbox"/>	4	The geotechnical investigation report should contain representative geologic/geotechnical cross sections that show the existing and proposed grades, distribution of fill and geologic units, groundwater conditions, and proposed construction.
<input type="checkbox"/>	5	The project's geotechnical consultant should provide a conclusion regarding if the proposed development will destabilize or result in settlement of adjacent property or the right of way.
<input type="checkbox"/>	6	The project's geotechnical consultant should provide a statement as to whether or not the site is suitable for the intended use.
<input type="checkbox"/>	7	Storm Water Requirements for the proposed conceptual development will be evaluated by LDR-Engineering review. Priority Development Projects (PDPs) may require an investigation of storm water infiltration feasibility in accordance with the Storm Water Standards (including Appendix C and D). Check with your LDR-Engineering reviewer for requirements. LDR-Engineering may determine that LDR-Geology review of a storm water infiltration evaluation is required.

(New Issue)

For questions regarding the LDR-Geology review, please call Kreg Mills at (619) 446-5295 or Project Nbr: 520606 / Cycle: 3



p2k v 02.03.38

Firouzeh Tirandazi 446-5325

Cycle Issues



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Review Information

Cycle Type: 3 Submitted (Multi-Discipline)
Submitted: 03/10/2017 **Deemed Complete on** 03/13/2017
Reviewing Discipline: Plan-Historic
Cycle Distributed: 03/13/2017
Reviewer: Pekarek, Camille
Assigned: 03/13/2017
(619) 236-7173
Started: 04/11/2017
CLPekarek@sandiego.gov
Review Due: 04/11/2017
Hours of Review: 0.50
Completed: 04/11/2017 **COMPLETED ON TIME**
Next Review Method: Submitted (Multi-Discipline)
Closed: 05/19/2017

- The review due date was changed to 05/17/2017 from 04/14/2017 per agreement with customer.
- The reviewer has indicated they want to review this project again. Reason chosen by the reviewer: First Review Issues.
- We request a 2nd complete submittal for Plan-Historic on this project as: Submitted (Multi-Discipline).
- The reviewer has requested more documents be submitted.
- Your project still has 5 outstanding review issues with Plan-Historic (all of which are new).
- Last month Plan-Historic performed 322 reviews, 96.6% were on-time, and 96.4% were on projects at less than < 3 complete submittals.

4-11-2017

Cleared?	Issue Num	Issue Text
<input checked="" type="checkbox"/>	1	The property located at 6176 Federal Boulevard is not an individually designated resource and is not located within a designated historic district. However, San Diego Municipal Code Section 143.0212 requires City staff to review all projects impacting a parcel that contains a structure 45 years old or older to determine whether a potentially significant historical resource exists on site prior to issuance of a permit. (Info Only, No Response Required) (New Issue)
<input checked="" type="checkbox"/>	2	During this review buildings are evaluated for eligibility under local designation criteria. The designation criteria and guidelines for their application can be found on the City's website: http://www.sandiego.gov/planning/programs/historical/pdf/201102criteriaguidelines.pdf (Informational Only; No Response or Action Required) (New Issue)
<input checked="" type="checkbox"/>	3	More information regarding this review process can be found in Information Bulletin 580: http://www.sandiego.gov/development-services/pdf/Industry/infobulletin/ib580.pdf (Informational Only; No Response or Action Required) (New Issue)
<input checked="" type="checkbox"/>	4	If City staff determines after review of these documents that no potentially significant historical resource exists on site, the parcel will be exempt from further historical review for five years from this date unless new information is provided that speaks to the building's eligibility for designation. (Informational Only; No Response or Action Required) (New Issue)
<input checked="" type="checkbox"/>	5	If City staff determines that a potentially significant historical resource exists on the site, all modifications and additions will be evaluated to determine consistency with the Secretary of the Interior's Standards for Treatment of Historic Properties (Standards). If the proposed project is consistent with the Standards, the permit process may proceed and the parcel will require additional review for all future modifications. (continued...) (New Issue)
<input checked="" type="checkbox"/>	6	(...continued) If the proposed project is not consistent with the Standards, the applicant may redesign the project or prepare a historic report that evaluates the building's integrity and eligibility under all designation criteria. (Informational Only; No Response or Action Required) (New Issue)
<input checked="" type="checkbox"/>	7	Staff has reviewed the photos; Assessor's Building Record; water and sewer records; written description of the property and alterations; as well as any available historic photographs; and Sanborn maps. In addition, staff has considered any input received through applicable public noticing and outreach and have made the following determination: (New Issue)
<input type="checkbox"/>	8	Staff cannot make a determination with the information provided please provide the following documents: (New Issue)
<input type="checkbox"/>	9	Discretionary projects are required to submit all documentation identified in Information Bulletin 580, Section II.D. Please review the Bulletin and provide all documentation not provided with this submittal, including: (New Issue)

For questions regarding the Plan-Historic review, please call Camille Pekarek at (619) 236-7173. Project Nbr: 520606 / Cycle: 3



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<u>Cleared?</u>	<u>Issue Num</u>	<u>Issue Text</u>
<input type="checkbox"/>	10	Notice of Completion - typically provided as part of a chain of title search. It can also be found at the County Administration Center, 1600 Pacific Highway, Room 103, San Diego CA 92101. Please provide a written statement if a Notice of Completion cannot be located. (New Issue)
<input type="checkbox"/>	11	Chain of Title - available through title search companies or by conducting research at the County Administration Center. The Chain of Title must be in tabular format, listing the property's conveyance from seller to buyer (with date) since construction (1951) through the present day. Please note that deed copies do not satisfy this requirement. (New Issue)
<input type="checkbox"/>	12	City Directory listing of occupants - available in the City Directories at the San Diego Public Library, or San Diego Historical Society Archives. The tabular listing of occupants must account for all years from the time of construction to the present. If the property is vacant or not listed for a particular year(s), please note it as such. Please note that copies of directory pages does not satisfy this requirement. (New Issue)



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Review Information

Cycle Type: 3 Submitted (Multi-Discipline) **Submitted:** 03/10/2017 **Deemed Complete on** 03/13/2017
Reviewing Discipline: Plan-Facilities Financing **Cycle Distributed:** 03/13/2017
Reviewer: Sheffield, Megan **Assigned:** 03/16/2017
(619) 533-3672 **Started:** 03/22/2017
MSheffield@sandiego.gov **Review Due:** 04/11/2017
Hours of Review: 2.50 **Completed:** 05/09/2017 **COMPLETED LATE**
Next Review Method: Submitted (Multi-Discipline) **Closed:** 05/19/2017

- The review due date was changed to 05/17/2017 from 04/14/2017 per agreement with customer.
- We request a 2nd complete submittal for Plan-Facilities Financing on this project as: Submitted (Multi-Discipline).
- The reviewer has requested more documents be submitted.
- Last month Plan-Facilities Financing performed 130 reviews, 96.9% were on-time, and 85.3% were on projects at less than < 3 complete submittals.

New Issue Group (2770523)

	<u>Issue</u>
<u>Cleared?</u>	<u>Num</u> <u>Issue Text</u>
<input checked="" type="checkbox"/>	1 Impact fees are not assessed on Conditional Use Permits. (New Issue)



Cycle Issues



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Review Information

Cycle Type: 3 Submitted (Multi-Discipline) Submitted: 03/10/2017 Deemed Complete on 03/13/2017
Reviewing Discipline: PUD-Water & Sewer Dev Cycle Distributed: 03/13/2017
Reviewer: Purdy, Jay Assigned: 03/13/2017
(619) 446-5456 Started: 03/16/2017
JPurdy@sandiego.gov Review Due: 04/11/2017
Hours of Review: 3.00 Completed: 03/16/2017 COMPLETED ON TIME
Next Review Method: Submitted (Multi-Discipline) Closed: 05/19/2017

- The review due date was changed to 05/17/2017 from 04/14/2017 per agreement with customer.
- The reviewer has indicated they want to review this project again. Reason chosen by the reviewer: First Review Issues.
- We request a 2nd complete submittal for PUD-Water & Sewer Dev on this project as: Submitted (Multi-Discipline).
- The reviewer has requested more documents be submitted.
- Your project still has 4 outstanding review issues with PUD-Water & Sewer Dev (all of which are new).
- Last month PUD-Water & Sewer Dev performed 167 reviews, 95.2% were on-time, and 71.3% were on projects at less than < 3 complete submittals.

New Issue Group (2765140)

Cleared?	Issue Num	Issue Text
<input checked="" type="checkbox"/>	1	Water and sewer capacity charges will be calculated at the time of building permit issuance. Capacity charges, as well as service and meter size, are determined by the Water Meter Data Card which is completed during the building plan review process. Any questions regarding water and sewer capacity fees should be addressed to Information and Application Services (619-446-5000).
		(New Issue) [Recommended]
<input checked="" type="checkbox"/>	2	All water services to the site (excepting single family domestic service lines, and single family domestic/fire combined service lines where the residential fire sprinkler system utilizes passive purge design) must pass through a private above ground back flow prevention device (BFPD).
		(New Issue) [Recommended]
<input checked="" type="checkbox"/>	3	Please direct any questions you may have regarding the information, comments or conditions contained in this review to Jay Purdy via email at jpurdy@sandiego.gov.

(New Issue) [Recommended]

New Issue Group (2765166)

Cleared?	Issue Num	Issue Text
<input type="checkbox"/>	4	On the Site Plan (EXHIBIT A), please locate and label all existing and proposed public ROWs, water, sewer, and general utility easements which lie on or adjacent to the property under review. If there are no water, sewer, or general utility easements associated with the property under review, please so state in the Water & Sewer Notes on the Site Plan. If the development will include the abandonment of an existing easement, please make this clear in the easement's label on the Site Plan.
		(New Issue)
<input type="checkbox"/>	5	On the Site Plan (EXHIBIT A), within that portion of any public ROW or public easement which lies on or adjacent to the property under review, please locate and label all existing and proposed water and sewer facilities both public and private (e.g. mains, meters, services, BFPD's, FH's, CO's, MH's, etc...). Please ensure that labels for existing public water and sewer mains include the City const. dwg. ref. #, pipe dia., and pipe material. BFPDs are to be located above ground, on private property, in line with the service, and immediately adjacent to the right-of-way.
		(New Issue)
<input type="checkbox"/>	6	On the Site Plan (EXHIBIT A), please show and label the existing water service(s) as "TO BE KILLED AT THE MAIN" or "TO BE RETAINED AND REUSED", please also show and label the existing sewer service(s) as "TO BE ABANDONED AT THE PROPERTY LINE" or "TO BE RETAINED AND REUSED".
		(New Issue)
<input type="checkbox"/>	7	On both the Site Plan (EXHIBIT A) and Landscape Plan, please include the following note: NO TREES OR SHRUBS WHOSE HEIGHT WILL 3' AT MATURITY SHALL BE INSTALLED OR RETAINED WITHIN 5' OF ANY PUBLICLY MAINTAINED WATER FACILITIES OR WITHIN 10' OF ANY PUBLICLY MAINTAINED SEWER FACILITIES.

(New Issue)

For questions regarding the PUD-Water & Sewer Dev review, please call Jay Purdy at (619) 446-5456. Project No: 520606 / Cycle 3

Cycle Issues



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Review Information

Cycle Type: 3 Submitted (Multi-Discipline)	Submitted: 03/10/2017	Deemed Complete on: 03/13/2017
Reviewing Discipline: LDR-Landscaping	Cycle Distributed: 03/13/2017	
Reviewer: Nari, Daniel (619) 687-5967 Dneri@sandiego.gov	Assigned: 03/15/2017	
	Started: 04/11/2017	
Hours of Review: 6.00	Review Due: 04/11/2017	
Next Review Method: Submitted (Multi-Discipline)	Completed: 04/11/2017	COMPLETED ON TIME
	Closed: 05/19/2017	

- The review due date was changed to 05/17/2017 from 04/14/2017 per agreement with customer.
- The reviewer has indicated they want to review this project again. Reason chosen by the reviewer: First Review Issues.
- We request a 2nd complete submittal for LDR-Landscaping on this project as: Submitted (Multi-Discipline).
- The reviewer has requested more documents be submitted.
- Your project still has 12 outstanding review issues with LDR-Landscaping (all of which are new).
- Last month LDR-Landscaping performed 45 reviews, 97.8% were on-time, and 45.2% were on projects at less than < 3 complete submittals.

1st Review - 4/11/2017

Cleared?	Issue Num	Issue Text
<input type="checkbox"/>	1	Street Trees [142.0409]: Tree species shall be selected from the Neighborhood Street Tree list as shown in the Encanto Community Plan. Acceptable species include: Platanus racemosa, Jacaranda mimosifolia, Callistemon citrinus, and Olea europaea "Swan Hill". (New Issue)
<input type="checkbox"/>	2	Street Yard - Planting Area Provided (Sht. LDP-1): Street Yard planting area required is 923-s.f. and planting area provided is 791-s.f. for a planting area deficit. Applicant has provided a note indicating that the grasscrete area in spaces 7-10 will make up the balance, however it is unclear what the square footage of the grasscrete area is. Please address. Furthermore, the excess planting points provided is only 5-pts which would only allow a 5-sq.ft. reduction in provided planting area. Please clarify.
		(New Issue)
<input type="checkbox"/>	3	Street Yard - Planting Points Required (Sht. LDP-1): Street Yard calculations for planting points required should read "185": (3690-s.f. x .05-pts/s.f. = 185 pts).
		(New Issue)
<input type="checkbox"/>	4	Street Yard - Excess Points Provided (Sht. LDP-1): Excess points provided is 6 pts. (190 pts. - 185 pts. = 5 pts.). Please correct.
		(New Issue)
<input type="checkbox"/>	5	Remaining Yard Calculations (Sht. LDP-1): Please remove "Remaining Yard" header under "Summary of Landscape Calculations." As demonstrated in the diagram, the project provides no Remaining Yard.
		(New Issue)
<input type="checkbox"/>	6	Remaining Yard Legend (Sht. LDP-1): Due to project observing Zero setback along the North/West/East facades, there is not Remaining Yard 0 (as stated in the Landscape Area Diagram). Under the Planting Legend, please remove the heading for "Remaining Yard Area" and incorporate the plant material counts into the "Street Yard" heading.
		(New Issue)
<input type="checkbox"/>	7	Utilities (Sht. LDP-1): Please show and label sewer/water/storm drain lateral lines in ROW and through site.
		(New Issue)
<input type="checkbox"/>	8	Vehicular Use Area Protection [142.0406(b)]: All VUA planting areas shall be protected from vehicular damage by providing a raised curb or wheel stop of at least 6-inches. Please show on plans.
		(New Issue)
<input type="checkbox"/>	9	VUA Screening [142.0406(c)]: In the planting area adjacent to the ROW, project shall provide shrubs that achieve a minimum height of 30-inches to screen the VUA. Please provide such shrub plantings between the ROW and the VUA.
		(New Issue)
<input type="checkbox"/>	10	VUA Points provided (Sht. LDP-1): The VUA Planting Points Provided is inconsistent between the Planting Legend Totals and the Calculation Totals. Please address.
		(New Issue)

For questions regarding the LDR-Landscaping review, please call Daniel Nari at (619) 687-5967. Project Nbr: 520606 / Cycle 6

Submittal Requirements



THE CITY OF SAN DIEGO
Development Services Department
1222 First Avenue, San Diego, CA 92101-4154

5/19/17 5:11 pm

Page 1 of 1

L64A-001

Project Information

Project Nbr: 520606 Title: Federal Blvd MMCC
Project Mgr: Tirandazi, Firouzeh (619)446-5325 ftirandazi@sandiego.gov



Review Cycle Information

Review Cycle: 6 Submitted (Multi-Discipline) Opened: 05/19/2017 5:05 pm Submitted:
Due: Closed:

Required Documents:

<u>Package Type</u>	<u>Pkg Qty</u>	<u>Document Type</u>	<u>Qty Needed</u>
Drainage/Hydrology Study	2	Drainage Study	2
Climate Action Plan Consistency Checklist	2	Climate Action Plan Consistency Checklist	2
Development Plans	10	Site Development Plans	10
Storm Water	3	Storm Water Reg. Applicability Checklist (DS-560)	3
Historic Resource Information	1	Historic Resource Information	1
Geotechnical Reports	2	Geotechnical Investigation Report	2
Medical Marijuana Radius Map/Spreadsheet	2	Medical Marijuana Radius Map/Spreadsheet	2
Water Quality Study	2	Water Quality Study	2

Exhibit 9

67% 5:43 PM

< Larry Geraci
8589564040



SMS/MMS

Wednesday, January 4, 2017

L

Hi Daryl I have the extreme
case of the flu and I'm in bed
I'll try to call you tomorrow or
the next day

12:20 PM

12:20 PM

Get better and try!

Thursday, January 5, 2017

8:52 AM

Any better?

Friday, January 6, 2017

8:40 AM

Can you call me. If for any
reason you're not moving
forward I need to know.

L

I'm at the doctor now
everything is going fine the
meeting went great yesterday
supposed to sign off on the
zoning on the 24th of this
month I'll try to

call you later today still very
sick

9:51 AM

Friday, January 13, 2017

Are you available for a call?

10:46 AM

L

I'm in a meeting I'll call you
when I'm done

10:47 AM

10:47 AM Thx

10:15 AM That sounds good. Can we
speak later?

(L) Not done Intel 1030 tonight ...
am tomorrow

11:27 AM

12:16 PM K

Wednesday, February 15, 2017

(L) Good morning Darrell... We
are preparing the documents
with the attorney

ney and hopefully will have
them by the end of this week

8:25 AM

1:00 PM Sounds good

Wednesday, February 22, 2017

(L) Contract should be ready in a
couple days

11:38 AM

Thursday, February 23, 2017

(L) Can you call me when you get
a chance thanks

2:38 PM

Monday, February 27, 2017

(L) Good morning Darrell I
emailed you the contract
for the purchase of the
property ...the relocation
contract will come sometime
today

8:50 AM

Hi Larry I'm traveling today
I will have a chance to look
at that tomorrow and I will
forward it to my attorney
thank you

10:04 AM

Friday, March 3, 2017

12:16 PM Did you get my email?

(L) Yes I did I'm having her
rewrite it now

As soon as I get it I will
forward it to you

12:17 PM

Monday, March 6, 2017

(L) Gina Austin Is there she has
a red jacket on If you want to
have a conversation with her

4:30 PM

Tuesday, March 7, 2017

(L) Just sent the contract over

12:05 PM

12:10 PM Ill look it over tonight

Thursday, March 16, 2017

(L) How's it going with the
contract?

4:47 PM

Friday, March 17, 2017

(L) Can we meet tomorrow

11:44 AM


 Enter message



Exhibit 10

FINCH • THORNTON • BAIRD^{LLP}

ATTORNEYS AT LAW

David S. Demian
ddemian@ftblaw.com

File 2403.002

September 22, 2017

VIA U.S. AND ELECTRONIC MAIL

Ms. Firouzeh Tirandazi
Development Project Manager II
Development Services Department
1222 First Avenue, MS 301
San Diego, California 92101-4101
ftirandazi@sandiego.gov

Re: 6176 Federal Boulevard - Project 520606 Conditional Use Permit

Dear Ms. Tirandazi:

We represent Darryl Cotton, the record owner of 6176 Federal Boulevard ("Property") that is the subject of the application ("Project 520606") to obtain a Conditional Use Permit ("CUP") to operate a Medical Marijuana Consumer Cooperative ("MMCC").

As set forth below, Rebecca Berry has no legal basis to be listed in any capacity on Project 520606. Therefore, we demand the City either: (1) remove Ms. Berry from Project 520606 and process the application for Mr. Cotton; or (2) commit to accepting Mr. Cotton's separate, parallel application for a CUP on the Property in his capacity as record owner.

1. Remove Ms. Berry From Project 520606

- a. Mr. Cotton is the record owner of the Property.¹
- b. Ms. Berry submitted the General Application (Form DS-3032) for Project 520606 as "an other person having a legal right, interest, or entitlement to the use of the property" pursuant to Municipal Code section 112.0102. She further submitted the Ownership Disclosure Statement (DS-318) as "Tenant/Lessee."
- c. Ms. Berry is not currently, and never has been, a Tenant/Lessee of the Property nor does she have any other legal right, interest, or entitlement to the use of the Property.
- d. Until reviewing a recently obtained copy of the application via a Public Records Act Request, Mr. Cotton had no knowledge that the Ownership Disclosure Statement (DS-318) contained a statement that Ms. Berry claimed an interest in the Property as a Tenant/Lessee.
- e. Municipal Code section 126.0302 provides that the privileges and conditions of a CUP are a covenant that runs with the land and, in addition to binding the permittee, bind each successor in interest. Further, a variance for the use of property in a particular manner is not personal to the owner at the time of the grant, but is available to any subsequent owner, until it expires according to its terms or is effectively revoked, and this is true, even though the original owner did not act on it. (See *Cohn v. County Bd. of Sup'rs of Los Angeles County* (1955) 135 Cal.App.2d 180, 184.)

¹ Record owner means the owner of real property as shown on the latest equalized property tax assessment rolls of the San Diego County Assessor (SDMC § 113.0103).

Ms. Firouzeh Tirandazi
September 22, 2017
Page 2 of 2

In sum, Ms. Berry cannot produce any evidence of a legal right, interest, or entitlement to the use of the Property confirming her interest in the Property. Therefore, she must be removed from Project 520606 and replaced by Mr. Cotton as record owner.

2. Accept Second Application

If the City nevertheless continues to recognize Ms. Berry as the Applicant for Project 520606 in her capacity as Tenant/Lessee, then we demand the City commit to accepting Mr. Cotton's separate, parallel application for a CUP on the Property in his capacity as record owner. We understand the City recently refused Mr. Cotton's request to process a separate, parallel CUP application on the Property. This refusal is not supported by any provision of the Municipal Code.

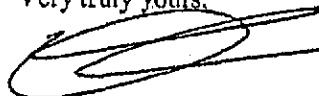
An application may be filed by any person that can demonstrate a legal right, interest, or entitlement to the use of the real property subject to the application. (SDMC § 112.0102.) Where there is a dispute over who has a right to the use of the property, the City must necessarily allow for multiple, separate applications from those parties to the dispute until the dispute has been resolved.

Indeed, the City's refusal to accept a separate, parallel CUP application directly conflicts with our own experience with Project 370687 and Project 421373, the second of which was submitted upon the City's advice and accepted for review while the first had already been approved by the Hearing Officer. In Project 370687, the property owner's authorized agent submitted a CUP application on behalf of the property owner. A dispute arose between the property owner and the authorized agent over who had the right to the CUP application. The property owner was forced to file a petition for writ of mandate against the City to replace the authorized agent with the property owner, and the property owner prevailed. (See *Engbreetsen v. City of San Diego* (2015) 37-2015-00017734-CU-WM-CTL.) While the lawsuit to determine who had the right over the CUP application was pending, the City allowed the property owner to submit his own CUP application for the same property in his capacity as property owner.

3. Conclusion

We demand the City either: (1) remove Ms. Berry from Project 520606 and process the application for Mr. Cotton; or (2) commit to accepting Mr. Cotton's separate, parallel application for a CUP on the Property in his capacity as record owner. We demand a response in writing by September 28, 2017. If we do not hear from you we will deem both of these requests to have been denied and will file a petition for writ of mandate with the Superior Court.

Very truly yours,



David S. Demian,
Partner

DSD:dsd/3BU080502

Exhibit 11

1 FERRIS & BRITTON
2 A Professional Corporation
3 Michael R. Weinstein (SBN 106464)
4 Scott H. Toothacre (SBN 146530)
5 501 West Broadway, Suite 1450
6 San Diego, California 92101
7 Telephone: (619) 233-3131
8 Fax: (619) 232-9316
9 mweinstein@ferrisbritton.com
10 stoothacre@ferrisbritton.com

11 AUSTIN LEGAL GROUP, APC
12 3990 Old Town Ave., Ste. A112
13 San Diego, CA 92110
14 Telephone: (619) 924-9600
15 Fax: (619) 881-0045
16 gaustin@austinlegalgroup.com

17 Attorneys for Real Parties in Interest
18 LARRY GERACI and REBECCA BERRY

19 SUPERIOR COURT OF CALIFORNIA
20 COUNTY OF SAN DIEGO, CENTRAL DIVISION

21 DARRYL COTTON, an individual,

22 Petitioner/Plaintiff,

23 v.

24 CITY OF SAN DIEGO, a public entity; and
25 DOES 1 through 25,

26 Respondents/Defendants.

27 REBECCA BERRY, an individual; LARRY
28 GERACE, an individual, and ROES 1 through
29 25,

30 Real Parties In Interest.

Case No. 37-2017-00037675-CU-WM-CTL

Judge: Hon. Eddie Sturgeon

DECLARATION OF ABHAY
SCHWEITZER IN SUPPORT OF
OPPOSITION TO EX PARTE
APPLICATION FOR ISSUANCE OF AN
ALTERNATIVE WRIT OF MANDATE
OR FOR AN ORDER SETTING AN
EXPEDITED HEARING AND BRIEFING
SCHEDULE

[IMAGED FILE]

DATE: October 31, 2017
TIME: 8:30 a.m.
DEPT: C-67

Petition Filed: October 6, 2017
Trial Date: None

1 I, Abhay Schweitzer, declare:

2 1. I am over the age of 18 and am not a party to this action. I have personal knowledge of
3 the facts stated in this declaration. If called as a witness, I would testify competently thereto. I
4 provide this declaration in support of Real Parties in Interest Rebecca Berry and Larry Geraci's ("Real-
5 Parties") opposition to Petitioner/Plaintiff's request for the ex parte issuance of a writ of mandate or
6 for an order setting an expedited hearing and briefing schedule.

7 2. I am a building designer in the state of California and a Principal with Techne, a design
8 firm I founded in approximately December 2010. Techne provides design services to clients
9 throughout California. Our offices are located at 3956 30th Street, San Diego, CA 92104. Our firm
10 has worked on approximately 30 medical marijuana projects over the past 5 years, including a number
11 of Conditional Use Permits for Medical Marijuana Consumer Cooperatives (MMCC) in the City of
12 San Diego ("City"). One of these projects was and is an application for a MMCC to be located at 6176
13 Federal Ave., San Diego, CA 92105 (the "Property").

14 3. On or about October 4, 2016, Rebecca Berry hired my firm to provide design services
15 in connection with the application for a MMCC to be developed and built at the Property (the
16 "Project"). Those services included, but are not limited to, services in connection with the design of
17 the Project and application for a Conditional Use Permit (the "CUP").]

18 4. The first step in obtaining a CUP is to submit an application to the City of San Diego.
19 My firm along with other consultants (a Surveyor, a Landscape Architect, and a consultant responsible
20 for preparing the noticing package and radius maps) prepared the CUP application for the client as
21 well as prepared the supporting plans and documentation. My firm coordinated their work and
22 incorporated it into the submittal.

23 5. On or after October 31, 2016, I submitted the application to the City for a CUP for a
24 medical marijuana consumer cooperative to be located on the Property. The CUP application for the
25 Project was submitted under the name of applicant, Rebecca Berry, whom I was informed and believe
26 was and is an employee and agent of Larry Geraci. The submittal of the CUP application required the
27 submission of several forms to the City, including Form DS-318, that I am informed and believe was

1 signed by the property owner, Darryl Cotton, authorizing/consenting to the application. A true and
2 correct copy of Form DS-318 that I submitted to the City is attached as Exhibit 3 to Real Parties in
3 Interest Notice of Lodgment in Support of Opposition to Ex Parte Application for Issuance of
4 Alternative Writ of Mandate or for an Order Setting an Expedited Hearing and Briefing Schedule
5 (hereafter "RPINOL"). Mr. Cotton's signed consent can be found on Form DS-318.

6 6. On the Ownership Disclosure Statement, I am informed and believe Cotton signed the
7 form as "Owner" and Berry signed the form as "Tenant/Lessee." The form only has three boxes from
8 which to choose when checking - "Owner", "Tenant/Lessee" and "Redevelopment Agency". The
9 purpose of that signed section, Part 1, is to identify all persons with an interest in the property *and*
10 *must be signed by all persons with an interest in the property.*

11 7. The CUP application process generally involves several rounds of comments from the
12 City in which the applicant is required to respond in order to "clear" the comment. This processing
13 involved substantial communication back and forth with the City, with the City asking for additional
14 information, or asking for changes, and our responding to those requests for additional information and
15 making any necessary changes to the plans. I have been the principal person involved in dealings with
16 the City of San Diego in connection with the application for a CUP. My primary contact at the City
17 during the process is and has been Firouzdeh Tirandazi, Development Project Manager, City of San
18 Diego Development Services Department, tele (619) 446-5325, the person whom the City assigned to
19 be the project manager for our CUP application.

20 8. We have been engaged in the application process for this CUP application for
21 approximately twelve (12) months so far.

22 9. At the outset of the review process a difficulty was encountered that delayed the
23 processing of the application. The Project was located in an area zoned "CO" which supposedly
24 included medical marijuana dispensary as a permitted use, but the City's zoning ordinance did not
25 specifically state that was a permitted use. I am informed and believe that on February 22, 2017, the
26 City passed a new regulation that amended the zoning ordinance to clarify that operating a medical
27 marijuana dispensary was a permitted use in areas zoned "CO." I am informed and believe this

1 regulation took effect on April 12, 2017, so by that date the zoning ordinance issue was cleared up and
2 the City resumed its processing of the CUP application.

3 10. The CUP application for this Project has completed the initial phase of the process.
4 This initial phase was completed when the City deemed the CUP application complete (although not
5 yet approved) and determined the Project was located in an area with proper zoning. When this
6 occurred, as required, notice of the proposed project was given to the public as follows: First, on
7 March 27, 2017, the City posted a Notice of Application (or "NOA") for the Project on its website for
8 30 days and provided the NOA to me, on behalf of the applicant, for posting at the property; Second,
9 the City mailed the Notice of Application to all properties within 300 feet of the subject property.
10 Third, as applicant we posted the Notice of Application at the property line as was required.

11 11. Since the completion of the initial phase of the process we have been engaged in
12 successive submissions and reviews and are presently engaged still in that submission and review
13 process. The most recent comments from the City were received on October 20, 2017. There is one
14 major issue left to resolve regarding a street dedication. I expect this issue to be resolved within the
15 next six (6) weeks.

16 12. Once the City has cleared all the outstanding issues it will issue an environmental
17 determination and the City Clerk will issue a Notice of Right to Appeal Environmental Determination
18 ("NORA"). I expect the NORA to be issued sometime in late December 2017 or January 2018.

19 13. The NORA must be published for 10 business days. If no interested party appeals the
20 NORA, City staff will present the CUP for a determination on the merits by a Hearing Officer. The
21 hearing is usually set on at least 30 days' notice so the City's Staff has time to prepare a report with its
22 recommendations regarding the issues on which the hearing officer must make findings. If there is no
23 appeal of the NORA, I expect the hearing before the hearing officer to be held in late January or
24 February 2018.

25 14. If the NORA is appealed it will be set for hearing before the City Council. It is my
26 opinion that the earliest an appeal of the NORA could be heard before the City Council would be mid-
27 January 2018. In all but one instance, the City Council has denied a NORA appeal related to a medical
28

1
2 marijuana CUP application. The one NORA appeal that was upheld is a project located in a flood
3 zone.

4 15. If there is a NORA appeal and such appeal is denied by the City Council, then the
5 earliest I would expect the CUP application to be heard by a hearing officer would be March 2018.

6 16. If there is a NORA appeal and it is upheld by the City Council, the City Council would
7 retain jurisdiction and the CUP application would be heard by the City Council for a final
8 determination at some point after the NORA appeal. In that case the earliest I would expect this to
9 occur would also be March 2018.

10 17. To date we have not yet reached the stage of a City Council hearing and there has been
11 no final determination to approve the CUP.

12 18. I have been notified by the City of San Diego that as of October 30, 2017, there has been
13 no other CUP Application submitted concerning on the property.

14
15 I declare under penalty of perjury under the laws of the State of California, that the foregoing is
16 true and correct. Executed this 30th day of October, 2017.

17
18 Dated: 10/30/2017


19 ABHAY SCHWEITZER

Exhibit 12

Development Services Department

Invoice #806763

Invoice Information	
Status	Invoiced
Issued on	10/20/2017
Issued by	Tirandazi, Firouzeh
Customer	Berry, Rebecca
Firm	
Paid	

Invoice Details		
Project #520606 (/Web/Projects/Details/520606) – Federal Blvd MMCC Cac, Cherlyn (619)236-6327		Project Subtotal \$6,000.00
Project Fees		Project Fees Subtotal \$6,000.00
Deposit Account	14245 Dollars	\$14,245.00
Deposit Account	8245 Dollars	(\$8,245.00)
Invoice Total		\$6,000.00

[Pay Now](#)

Invoice Revenue		
Fund	Revenue Account	Amount
DEPOSITS	PLANNING SUBDIVISION DPST	\$6,000.00

Upon payment of any Development Impact Fees (DIF), Regional Transportation Congestion Improvement Program (RTCIP), or Facilities Benefit Assessment (FBA) fees, the 90-day protest period in which you may protest these fees under Government Code section 66020 will begin. A written protest must be filed with the City Clerk pursuant to Government Code section 66020. The protest procedures under section 66020 are additional to other procedures authorized or required under the San Diego Municipal Code. Please contact Facilities Financing at 619-533-3670 to request additional information.

Data TimeStamp: 12/05/2017 19:34:47

Invoice FAQ (<https://www.sandiego.gov/development-services/opensd/invoices.shtml>)

DAVID S. DEMIAN, SBN 220626
E-MAIL: ddemian@fblaw.com
ADAM C. WITT, SBN 271502
E-MAIL: awitt@fblaw.com
RISHI S. BHATT, SBN 312407
E-MAIL: rbhatt@fblaw.com

F I L E D
Clerk of the Superior Court

DEC 6 2017
DEC 6 11:10:45

FINCH, THORNTON & BAIRD, LLP

ATTORNEYS AT LAW
4747 EXECUTIVE DRIVE - SUITE 700
SAN DIEGO, CALIFORNIA 92121-3107
TELEPHONE: (858) 737-3100
FACSIMILE: (858) 737-3101

By: A. SEAMONS, Deputy

F I L E D
Clerk of the Superior Court

DEC 6 2017

Attorneys for Petitioner/Plaintiff Darryl Cotton

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

CENTRAL DIVISION

DARRYL COTTON, an individual,

Petitioner/Plaintiff,

v.

CITY OF SAN DIEGO, a public entity; and
DOES 1 through 25,

Respondents/Defendants,

CASE NO: 37-2017-00037675-CU-WM-CTL

NOTICE OF LODGMENT IN SUPPORT OF
DARRYL COTTON'S EX PARTE
APPLICATION FOR AN ORDER
SHORTENING TIME TO HEAR MOTION
FOR ISSUANCE OF PEREMPTORY WRIT
IN THE FIRST INSTANCE

[IMAGED FILE]

Assigned to:
Hon. Joel R. Wohlfeil, Dept. C-73

Date: December 7, 2017
Time: 8:30 a.m.
Dept.: C-73

Petition Filed: October 6, 2017
Trial Date: Not Set

REBECCA BERRY, an individual;
LARRY GERACI, an individual; and
ROES 1 through 25,

Real Parties In Interest.

/////

/////

/////

NOTICE OF LODGMENT IN SUPPORT OF DARRYL COTTON'S EX PARTE APPLICATION FOR AN
ORDER SHORTENING TIME TO HEAR MOTION FOR ISSUANCE OF PEREMPTORY WRIT IN THE
FIRST INSTANCE

BY FAX

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that petitioner/plaintiff Darryl Cotton ("Cotton") lodges a

3 true and correct copy of his Verified Petition for Alternative Writ of Mandate [Code Civ. Proc.,
4 § 1085], along with its exhibits, as Exhibit A to this Notice Of Lodgment. For the Court's
5 convenience, the exhibits to the Verified Petition are as follows:

6

Exhibit	Description
1	CUP application, including Ownership Disclosure Statement
2	November 2, 2016 Agreement
3	Email dated November 2, 2016 between Cotton and Geraci
4	Letter dated September 22, 2017 from Cotton to the City
5	Email dated September 29, 2017 from City to Cotton

7
8
9

10 DATED: December 6, 2017

Respectfully submitted,

11 FINCH, THORNTON & BAIRD, LLP

12
13 By: 

14 DAVID S. DEMIAN

ADAM C. WITT

15 RISHI S. BHATT

Attorneys for Petitioner/Plaintiff Darryl Cotton

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20
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23
24
25
26

27 2403.002/3C48051.amq